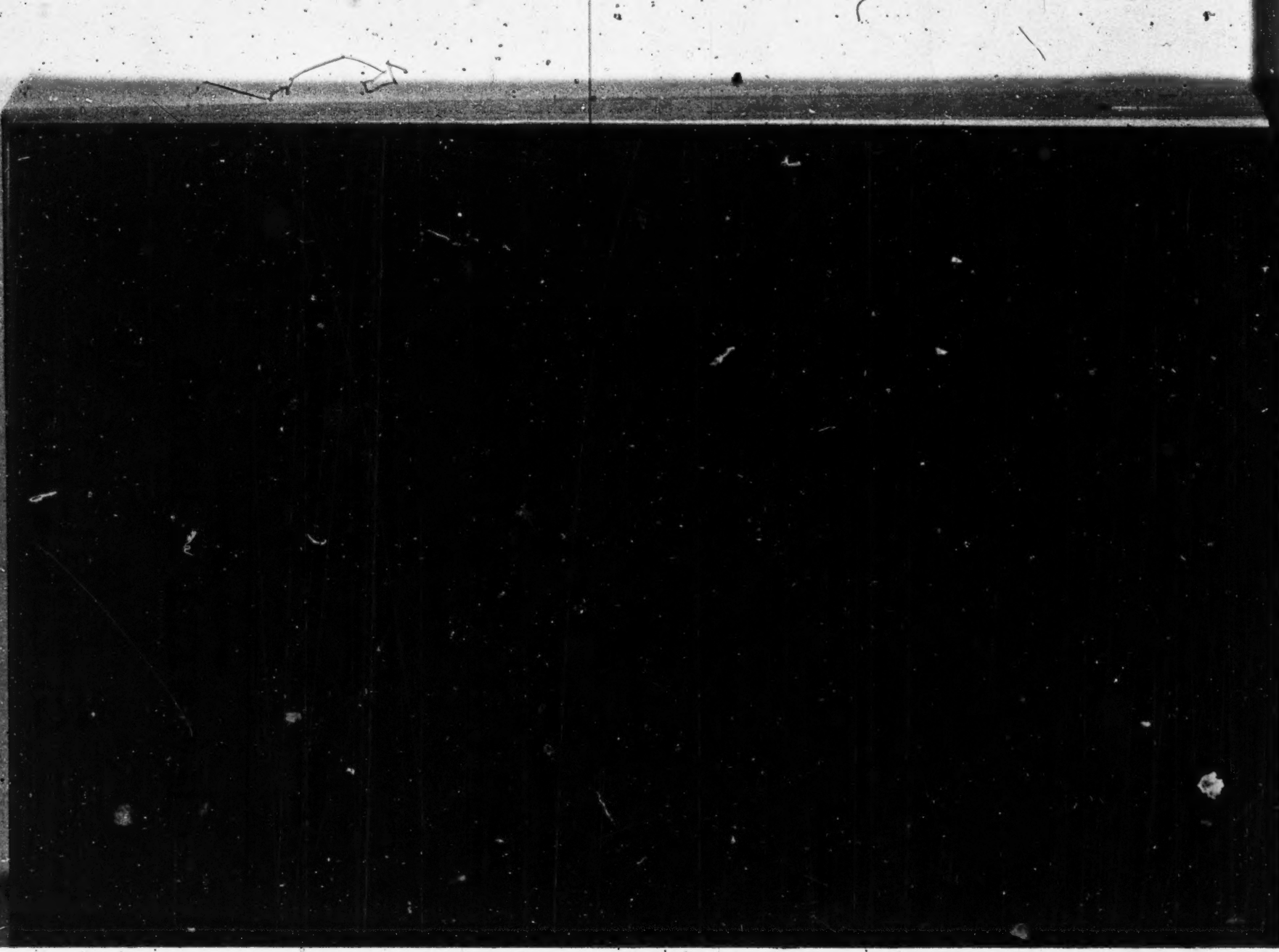

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,

Plaintiffs,

vs.

HOWARD SUTHERLAND, as Alien Property Custodian, FRANK WHITE, as Treasurer of the United States, and ZENTRAL EINKAUFS GESELLSCHAFT, m. b. H.,

Defendants.

In Proceedings to Vacate Final Decree of December 30, 1929.

IRVING TRUST COMPANY, as Executor of Hermann Sielcken, Deceased,

Intervenor in Proceeding to Vacate, Appellant, and Respondent on Cross-Appeal.

THE ATTORNEY-GENERAL OF THE UNITED STATES, on behalf of the United States and as successor to the Alien Property Custodian,

Respondent and Cross-Appellant.

THE UNITED STATES OF AMERICA,

Respondent.

JOHN S. SORENSON,

Defendant-Respondent.

RECORD ON APPEAL AND CROSS-APPEAL.

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Statement Under Rule XIII.

Original Title of Suit was:

United States District Court

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs,

against

HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL-EINKAUFS-GESELLSCHAFT, m. b. H.,
Defendants.

Equity No. 44-28.

The motion made in 1938 to vacate the decree of December 30th, 1929, was entitled solely in the original suit.

On the application of the Irving Trust Company, as Executor of the Estate of Hermann Sielcken, deceased, for leave to intervene in the proceedings to vacate the decree of 1929, there was added to the above title the sub-title: "In Proceedings to Vacate Final Decree of December 30, 1929." And on subsequent papers there was added to the original suit title the sub-title: "In Proceedings to Vacate Final Decree of December 30, 1929. IRVING TRUST COMPANY, as Executor of the Estate of Hermann Sielcken, deceased, Intervenor."

The original bill in the suit was filed on December 21, 1927.

On January 3, 1928, was filed subpoena *ad respondendum* to defendants White and Sutherland and the Marshal's return of service on them.

The names of the original parties were (as in the caption above):

Statement Under Rule XIII

John S. Sorenson and Thorleif S. B. Nielsen, as surviving partners of the firm of Crossman & Sielcken, Plaintiffs,

and Howard Sutherland, as Alien Property Custodian, Frank White, as Treasurer of the United States, and Zentral-Einkaufs-Gesellschaft, m. b. H., Defendants.

The defendants Sutherland and White appeared and answered on January 23, 1928; their answer including a motion to dismiss.

Defendant Zentral-Einkaufs-Gesellschaft, m. b. H., filed its answer on September 6, 1929.

No defendant was arrested or bail taken or property attached or arrested.

The trial of the original suit was begun before Hon. Francis G. Caffey on December 20, 1929, and concluded before him on December 21, 1929.

No question was referred to a Commissioner or Commissioners, or Master or Referee.

No interlocutory decree was filed.

Final decree for the plaintiffs was signed by Judge Caffey on December 30, 1929, and filed January 2, 1930.

Warrant for satisfaction of decree in the amount of $727,618.93 was filed on April 12, 1930.

(The foregoing are the proceedings in the original suit.)

On September 9th, 1930, the plaintiff Thorleif S. B. Nielsen died.

On May 19th, 1938, notice of a motion by the United States, appearing by Lamar Hardy, United States Attorney for the Southern District of New York, to vacate the decree of December 30, 1929, addressed to John S. Sorenson and to the Chase National Bank as Ancillary Executor of Thorleif S. B. Nielsen, deceased, with accompanying affidavit of Frank C. Sterck, was served on John S. Sorenson and on the Chase National Bank as Ancillary Executor of Nielsen. Same was filed on January 30th, 1939. (This notice of motion was entitled merely in the original suit.)

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June 11th, 1938, John S. Sorenson appeared and filed his affidavit in answer to the motion.

June 10th, 1938, the Chase National Bank, appearing specially, made application as Ancillary Executor of Thorleif S. B. Nielsen to have the service of such notice of motion and affidavit upon it set aside, vacated and annulled.

June 16th, 1938, order was entered vacating and setting aside such service upon the Chase National Bank as such Ancillary Executor.

8 June 16th, 1938, the Irving Trust Company, as Executor of Hermann Sielcken, deceased, filed application for leave to intervene in the proceeding to vacate the decree, as one having an interest acquired under the decree of December 30, 1929, subsequent to its entry.

June 28th, 1938, order was entered granting leave to the Irving Trust Company, as Executor of Hermann Sielcken, deceased, so to intervene in the proceeding to vacate.

June 30th, 1938, the Irving Trust Company, as Executor of Hermann Sielcken, appeared as such Intervenor in the Proceeding to Vacate by Leonard B. Smith and Selden Bacon, Esqs., its attorneys.

9 August 15th, 1938, said Irving Trust Company, as such Executor, served and filed answering affidavits.

September 15th, 1938, replying affidavits were served by the United States, and filed on January 30th, 1939.

September 23, 1938, affidavits in rebuttal on behalf of the Irving Trust Company were served and filed.

October 10th, 1938, supplementary affidavit on behalf of the United States was served, and filed on January 30th, 1939.

October 26th, 1938, a second supplementary affidavit was served on behalf of the United States, and filed on October 26th, 1938.

January 30, 1939, further rebutting affidavits, served on October 21st, 1938, were filed on behalf of the Irving Trust Company as such executor.

October 11th, 1938, the motion to vacate the decree of December 30, 1929, was argued by the parties before Goddard, J.

October 26th, 1938, Francis J. McNamara, Esq., served

a notice of his appearance as Special Assistant to the Attorney-General of the United States of America, attorney for Homer S. Cummings, Attorney-General of the United States, on behalf of the United States and as successor to the Alien Property Custodian.

January 30th, 1939, the opinion of Goddard, J., granting motion to vacate, on grounds therein stated, was filed.

February 14th, 1939, Gregory F. Noonan, Esq., appeared as United States Attorney for the Southern District of New York as successor to Lamar Hardy, Esq., as
11 United States Attorney for that District.

March 9th, 1939, order was filed substituting Hon. Frank Murphy as Attorney-General and successor to the Alien Property Custodian, for his predecessor in office Hon. Homer S. Cummings.

April 7th, 1939, John T. Cahill, Esq., appeared as successor to Gregory F. Noonan, Esq., as United States Attorney for the Southern District of New York.

April 14th, 1939, order proposed on behalf of the United States, with notice of settlement, was presented, and such proposed order was filed in the Clerk's office on July 10th, 1939. Hearing was had before Judge God-
12 dard on settlement of the order later appealed from, Francis J. McNamara, Esq., arguing on behalf of the Attorney-General of the United States in support of the order proposed on its behalf, signature of which was refused.

April 28th, 1939, the order, signed by Judge Goddard, vacating decree of December 30, 1929, was entered and filed.

May 13th, 1939, notice of appeal by the Irving Trust Company, as Executor of Hermann Sielcken, deceased, to the United States Circuit Court of Appeals for the Second Circuit, from the order of April 28th, 1939, and bond for costs on such appeal, were filed.

May 23rd, 1939, there was filed notice of cross-appeal by Hon. Frank Murphy as Attorney-General of the United States and successor to the Alien Property Custodian on behalf of the United States to the Circuit Court of Appeals for the Second Circuit from so much of the order of April 28th, 1939, as failed to grant additional relief asked by the cross-appellant.

Notice of Motion to Vacate Final Decree. 13

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs,
against
HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL-EINKAUFS-GESELLSCHAFT, m. b. H.,
Defendants.

Equity No. 44-28. 14

Sirs:

Please Take Notice that upon the affidavit of Frank C. Sterck, an attorney in the United States Department of Justice, and the exhibits attached thereto, verified the 18th day of May, 1938, the undersigned will move this Court at a term thereof for motions, to be held on the 3rd day of June, 1938, at Room 506, in the United 15 States Court House, in the Borough of Manhattan, City of New York, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order vacating the final decree entered in this cause on the 30th day of December, 1929, on the ground that said final decree is void because this Court was without jurisdiction to enter the same.

Please Take Further Notice that this notice of motion having been served upon you at least ten days before the hearing thereof, you are required, pursuant to Rule 64 of the Rules of Civil Practice of the State of New York, to serve upon the undersigned, at least

16 *Notice of Motion to Vacate Final Decree*

five days before such hearing, all affidavits to be used in answering the motion.

Dated, New York, N. Y., May 18th, 1938.

Yours, etc.,

LAMAR HARDY,
United States Attorney for the Southern District of New York, Attorney for United States.
Office & P. O. Address,
17 United States Court House, etc.

To:
Chase National Bank of the City of New York,
As Ancillary Administrator of the Estate of
Thorleif S. B. Nielsen,
18 Pine Street,
New York, N. Y.

John S. Sorenson, Esq.,
757 Carroll St.,
Brooklyn, N. Y.

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Affidavit of Frank C. Sterck, in Support of Motion.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.] Equity No. 44-28.

City of New York,
County of New York, ss:

Frank C. Sterck, being first duly sworn, deposes and says:

That he is an attorney in the United States Department of Justice;

That he has examined the pleadings and the decree in the United States District Court for the Southern District of New York in this cause and the files of the Department of Justice relating thereto;

That on the second day of June, 1913, Hermann Sielcken, John S. Sorenson, and Thorleif S. B. Nielsen, executed a partnership agreement for the purpose of continuing the business of the firm of Crossman & Sielcken, dealers in general merchandise, engaged in business in the City of New York under the firm name of "Crossman & Sielcken." Paragraphs Fifth and Eleventh of said partnership agreement, a copy of which is hereto annexed, marked Exhibit A, and made a part hereof, respectively read as follows:

"FIFTH: The capital of the partnership shall consist of all the property and assets of every kind and description belonging to the said Herman Sielcken, as surviving partner of the late firm of Crossman & Sielcken, or such part thereof as may be used in the business of the partnership now formed, including the goodwill of said firm. The whole of the said capital shall continue to be the property of the said party of the first part, and,

upon the termination of the partnership from whatever cause, the same shall belong, entirely and absolutely, to the party of the first part or to his estate. The parties of the second and third parts shall have no share or title in or to any of the said capital, their only interest in the business consisting of their shares of the net profits that may be realized therefrom.

"ELEVENTH: Upon the death of the party of the first part, it shall be the duty of the surviving partners to transfer and pay over to the executor of the will of the deceased partner his capital as above defined and also all the property and business of the firm."

Thereafter, on the 23rd day of March, 1914, the said Hermann Sielcken executed his Last Will and Testament in accordance with the law of New York, a copy of which is hereto annexed, marked Exhibit B, and made a part hereof, and in said Will the said Hermann Sielcken provided as follows:

"I also appoint the Columbia Knickerbocker Trust Company of the City of New York, Executor of this Will, for the purpose of collecting and converting into cash all my property situated in the United States of America, and I direct said Company to transmit and pay over all the net proceeds thereof to my said Executors in Germany for administration and distribution by them."

The second paragraph of the Will provided:

"Whereas, since the death of my late partner, George W. Crossman, in the firm name of Crossman & Sielcken, I have become the sole owner of the property and business of that firm and I have admitted into partnership John S. Sorenson and Thorlief S. B. Nielsen to continue the business of the said late firm under the same firm name; and the Articles of Co-partnership made between us,

bearing date the second day of June, 1913, provide that in case of my death the said partnership shall come to an end and that it shall then be the duty of the surviving partners to transfer and pay over to the executor of my Will all the capital, property and business of the said firm.

"It is my desire that my executor, the Columbia Knickerbocker Trust Company, should leave the management of the firm business for liquidation in the hands of the said Sorenson and Nielsen, to the largest possible degree, under the direct supervision of the said Trust Company. In such case, the said Sorenson and Nielsen shall each receive, as compension for their services in such liquidation, the sum of One thousand dollars ($1,000) a month, after my death, from the commencement of the liquidation to its end."

On the next day, the 24th day of March, 1914, Hermann Sielcken sailed for Baden-Baden, Germany, where he remained until the date of his death, October 8, 1917.

That on or about September 25, 1914, Hermann Sielcken in Germany entered into an agreement with the Reichseinkauf (Imperial Purchasing Agency) whereby his firm in New York, Crossman & Sielcken, would purchase goods in New York and ship same in vessels of neutral nations to Baltic seaports, consigned to neutral consignees. The Reichseinkauf agreed to pay the value of the cargoes c. i. f. Baltic ports (*i. e.*, in other words, the value of the invoice plus freight and insurance expense) and 10% commission on this value. This agreement follows:

"Agreement

"Berlin W. 8, September 25th, 1914.

"I herewith confirm to Your Honor, that the 'Reichseinkauf' (Imperial or Government Purchase) in Hamburg has been commissioned to receive, in Baltic seaports, mixed cargoes of wheat, tea, cocoa

and high concentrated animal food, which are shipped by vessels of neutral nations from American ports to neutral ports of the Baltic Sea; the value of each cargo amounting up to about 600,000 Marks. The 'Reichseinkauf' will for such cargoes, pay the value of the cargo C. I. F. Baltic seaport (*i. e.*, the value of the invoice plus' freight and insurance expenses) and 10% commission on this value. Payment to be made on the arrival of the goods and delivery of the bills of lading at the port of destination. This also refers to whole steamer cargoes of high concentrated animal food (oil cakes, cotton seed cakes, etc.).

"The confirmation can be cancelled by us at any time and expires of itself on the proclamation of peace. Cargoes, which are on their way, are in such cases to still be received, and also goods, which have been contracted for shipment, as well as goods, which have previously been purchased and ordered for the purposes of this contract.

(Signed) RICHTER."

The Zentral-Einkaufs-Gesellschaft (Central Purchasing Agency), hereinafter referred to as the Z. E. G., was organized in January, 1915, succeeding to and taking over all of the business assets and liabilities of the enterprise theretofore operated by the Reichseinkauf. The activities of the Z. E. G. and of Dr. Heinrich F. Albert as its representative are more fully described in an affidavit of Carl Heynen, its attorney in fact, dated April 25, 1925, a copy of which is hereto annexed, marked Exhibit C, and made a part hereof.

The Z.E.G. ceased to exist as a corporate entity and its assets passed over to the Imperial German Government by virtue of the publication of a declaration by the Reichsminister of Finance dated October 31, 1926, a copy of which is hereto annexed and marked Exhibit D, with a translation thereof marked Exhibit D-1. There is also annexed an Extract from the Commercial Regis-

ter marked Exhibit D-2, with a translation thereof marked Exhibit D-3, both said exhibits being made a part hereof.

With reference to the status of the Reichs Kredit Gesellschaft, mentioned in said Exhibit D, the files of the Finance Division, Bureau of Foreign and Domestic Commerce, Department of Commerce, for the year 1931 discloses an extract from "Memorandum on German Government's Subscription to Stock of German Banks" as follows:

> "The Reich also controls through the United Industrial Corporation, the Reichs-Kredit-Gesellschaft. 32
> The latter is the banking affiliate of the United Industrial Corporation which is a holding company for various enterprises controlled by the German Government."

The firm of Theodor Wille, Hamburg, Germany, had a one-half interest in goods purchased by Crossman & Sielcken in New York and shipped to Baltic seaports for the Reichseinkauf or its successor the Z. E. G., pursuant to the above agreement. This fact was brought to the attention of John S. Sorenson by Hermann Sielcken in a letter dated at Hamburg, Germany, September 22, 1914. A copy of said letter is hereto annexed, marked Exhibit 33
E and made a part hereof. The following is quoted from this letter from Mr. Sielcken to John S. Sorenson:

> "Don't forget it is necessary for us to remain owners of the cargo until the steamer arrives at destination, you have to swear as American citizens that we are the owners and we are until the cargo is paid for and delivered. I have some friends who receive a part of the profit and who are willing to take a risk on $125,000 a week, who will guarantee us to sell on arrival and who will pay us a profit of a sufficient amount, and we have nothing to do with the loss, if any occurs. You know I will not work for small profit—a difficult business; Wille share the risk with us."

The following is quoted from an affidavit of John S. Sorenson, dated October 26, 1927:

"Shortly after the outbreak of the war, in the summer of 1914, Mr. Sielcken communicated with us in New York to the effect he saw a market could be developed for American goods to be purchased and shipped by Crossman & Sielcken in New York and sent in neutral vessels to neutral ports, consigned to neutral consignees. In accordance with this suggestion, we received instructions from Mr. Sielcken to proceed to purchase and ship food and similar stuff for the joint account of Crossman & Sielcken and Theodor Wille, Hamburg. The shipments were consigned to Copenhagen concerns whose names were furnished us by Mr. Sielcken and in due course, shortly after the arrival of the vessel at Copenhagen, Crossman & Sielcken would be reimbursed for the invoice price of the merchandise plus freight and insurance and be paid a commission of 10% on the value of the cargo as indicated by the total amount of the invoice, freight and insurance. These payments, except as hereinafter noted came to us through Kuhn Loeb & Company or the National City Bank, both of New York City. This business was entered in certain Crossman & Sielcken ledgers known as Brazil Ledger J (page 710) and Brazil Ledger K (page 916), under the name 'Crossman & Sielcken, Copenhagen Joint Account.'" (See Exhibit U.)

Between November 13, 1914, and April 28, 1915, Crossman and Sielcken made twenty-one shipments to Baltic seaports, pursuant to the above agreement. Fourteen of these shipments arrived safely, and Crossman & Sielcken were reimbursed for the cargoes and paid their commission of 10%. The remaining seven shipments were seized by the British Naval Authorities and condemned in the British Prize Court. These shipments were as follows:

Steamship	Amt. of Invoice Freight and Ins.	Amount of Commission	Total
United States	$28,776.73	$2,877.67	$ 31,654.40
Hilding	95,578.29	9,557.83	105,136.12
Arkansas	48,686.81	4,868.68	53,555.49
Hellig Olav	28,105.99	2,810.60	30,916.59
Gunborg	43,997.16	4,399.72	48,396.88
Indianic	53,471.31	5,347.13	58,818.44
Oscar II	83,625.87	8,362.59	91,988.46
			$420,466.38 38
Less payment crackers and cereals on S. S. Oscar II		8,050.44	
S. S. United States		31,654.40	39,704.84
		Net Amount Due	$380,761.54

On or about December 27, 1917, the Z. E. G. and the Executors of the Estate of Hermann Sielcken in Germany agreed to allow a Court of Arbitration in Germany decide who should bear the risk of loss and whether or not these shipments were to be paid for by the Z. E. G.

On January 20, 1918, the Court of Arbitration of Hamburg, Germany, handed down a decision indicating that 39
the Z. E. G. was not liable on these shipments, but asked for some additional information. Before the additional information was furnished, attorneys for the Z. E. G. and attorneys for the Executors of the Estate of Hermann Sielcken in Germany arrived at a settlement, whereby Crossman & Sielcken were permitted to retain the $31,654.40 received from the Z. E. G. for the shipment on the S. S. United States. In this settlement the Executors of the Estate of Hermann Sielcken in Germany assumed the responsibility that the firm of Crossman & Sielcken and/or its liquidators or successors would recognize the compromise settlement; the Executors promised to save the Z. E. G. harmless against any possible claim which might later on be made by the firm of Crossman & Sielcken, and/or its successors or representatives, against the Z. E. G. for the six shipments

which the Z. E. G. was not obliged to pay the Estate of Hermann Sielcken in Germany for, under the compromise settlement. The Executors further promised to endeavor as far as possible to induce the firm of Crossman & Sielcken, and/or its liquidators or successors, to turn over to the Z. E. G. whatever they may have received or may receive from any other source for the cargoes of the S. S. United States.

After the declaration of war between United States and Germany and upon orders of the United States War Trade Board, Sorenson and Nielsen proceeded to liquidate
41 the firm of Crossman & Sielcken and on November 16, 1917, License No. ET-344 was issued to said Sorenson and Nielsen by the War Trade Board under the Trading with the Enemy Act requiring them, among other things, to turn over to the Alien Property Custodian the share of the enemy partner, Hermann Sielcken, in said firm of the proceeds in the liquidation. A copy of said License is hereto annexed, marked Exhibit F, and made a part hereof.

On November 30, 1917, the Alien Property Custodian appointed the Columbia Trust Company as his Agent to represent him in the liquidation of the firm. A copy of
42 the letter of appointment is hereto annexed, marked Exhibit G, and made a part hereof. On the same date the Columbia Trust Company accepted the appointment to act as Agent for the Alien Property Custodian in the liquidation of the firm of Crossman & Sielcken, a copy of said letter of acceptance being annexed hereto, marked Exhibit H, and made a part hereof. In accordance with such appointment the said Columbia Trust Company transmitted its first report as agent in such liquidation to the Alien Property Custodian under date of December 12, 1917, stating that the Columbia Trust Company, as Agent for the Alien Property Custodian, had taken possession of all of the assets, including accounts receivable, of the firm of Crossman & Sielcken, a copy of which is hereto annexed, marked Exhibit I, and made a part hereof.

On January 26, 1918, the Columbia Trust Company was appointed Executor of Hermann Sielcken, deceased, of Baden-Baden, Germany, according to the certificate of the Clerk of the Surrogate's Court, a copy of which, with a copy of the Letters Testamentary, is hereto annexed, marked Exhibit J, and made a part hereof.

On March 29, 1921, the Columbia Trust Company, as Executor of the Estate of Hermann Sielcken, deceased, filed Claim No. 5914, as amended, with the Alien Property Custodian seeking the return to it, as Executor, of all the right, title and interest of said Sielcken in the liquidation of the partnership of Crossman & Sielcken which had been theretofore acquired and seized by the Custodian. A copy of said claim is annexed hereto, marked Exhibit K, and made a part hereof.

On April 4, 1921, six days after the filing of said notice of claim, the Attorney-General allowed said claim in purported pursuance of Section 9 of the Trading with the Enemy Act, and ordered the return of certain cash as well as the release of all right, title and interest of the Alien Property Custodian in the interest of Hermann Sielcken in the liquidation of the partnership of Crossman and Sielcken and in the Estate of Hermann Sielcken, deceased, to the said Columbia Trust Company, as Executor.

On December 29, 1922, the Columbia Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Crossman & Sielcken, filed a claim against Germany before the Mixed Claims Commission, United States and Germany, based on the same cargoes which were the subject of the instant cause of action. This claim is signed and sworn to by George E. Warren, Vice President of the Columbia Trust Company, and John S. Sorenson and Thorleif S. B. Nielsen, and asserts a "claim against the Government of Germany under the provisions of the Treaty between the United States and Germany of August 25, 1921, and the Agreement between the United States and Germany

of August 10, 1922, for the loss sustained by them as aforesaid in the sum of $190,133.05, being one-half of the total value of said merchandise ($380,266.09)." This claim alleges that the firm of Theodor Wille, composed of Gustav Diederichsen and Georg Georgius, both of whom were citizens and subjects of the Empire of Germany and who were engaged in business as wholesale merchants at Hamburg, Germany, hold equal undivided shares with Crossman & Sielcken in said cargoes and that the purchase, shipment and sale thereof was for their joint account as a joint adventure, as more particularly set forth in said claim. The claim further asserted:

> "V. That pursuant to the provisions of said agreement of co-partnership, upon the death of said Sielcken as aforesaid, said surviving partners Sorenson and Nielsen did transfer and pay over to said Columbia Trust Company, as executor as aforesaid, the said capital and also all the property and business of said firm; and that said Columbia Trust Company, as such executor, has ever since been and now is, engaged in liquidating the business of said partnership as if it had been carried on by said decedent in his sole name; and by reason of the foregoing, said Columbia Trust Company, as executor as aforesaid is entitled to collect and receive all the assets and credits of said firm of Crossman & Sielcken, and to prosecute and recover upon any and all causes of action and claims of whatever nature existing in favor of said firm at the time of its dissolution as aforesaid."

A copy of said claim is hereto annexed, marked Exhibit L, and made a part hereof. This claim before the Mixed Claims Commission was withdrawn on February 5, 1924.

On October 26, 1927, the American Exchange Irving Trust Company as successor to the Columbia Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of

Crossman & Sielcken, filed another claim against Germany and the Zentral-Einkaufs-Gesellschaft before the Mixed Claims Commission, United States and Germany, List No. 636, Docket No. 8305, for $380,761.54, for the recovery of the same cargoes which were the subject-matter of the instant cause of action. This claim is signed and sworn to by Orrin R. Judd, Vice President, American Exchange Irving Trust Company, and John S. Sorenson and Thorleif S. B. Nielsen, and a copy thereof is hereto annexed, marked Exhibit M, and made a part hereof. In this claim the claimants did not mention the fact that the firm of Theodor Wille, a firm composed of German nationals and having its principal place of business in Hamburg, Germany, had a one-half interest in this claim. The German Government, through its Agent before the Mixed Claims Commission, Carl von Lewinski, under date of October 15, 1928, filed an answer setting forth separate defenses to the claim, a copy of which answer is hereto annexed, marked Exhibit N, and made a part hereof. This claim was withdrawn from the Mixed Claims Commission in May of 1930 immediately upon the satisfaction of the decree entered in the instant cause in the District Court for the Southern District of New York.

On October 29, 1927, a notice of claim pursuant to Section 9 of the Trading with the Enemy Act, Claim No. 38530, Trust No. 592, was filed by the American Exchange Irving Trust Company (formerly known as Columbia Trust Company), John S. Sorenson and Thorleif S. B. Nielsen, making claim for a balance of $380,761.54, with interest, due claimants American Exchange Irving Trust Company (formerly known as Columbia Trust Company), executor of the Last Will and Testament of Hermann Sielcken, deceased, and claimants Sorenson and Nielsen, as liquidators of the firm of Crossman & Sielcken, an American co-partnership, composed of Hermann Sielcken, deceased, John S. Sorenson and Thorleif S. B. Nielsen. This claim was made for the recovery of the value of the same cargoes which were the subject-matter of the

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said claims before the Mixed Claims Commission, United States and Germany, and of the instant causes of action, and affecting property of the Zentral-Einkaufs-Gesellschaft m. b. H., Berlin, Germany, held by the Alien Property Custodian in Trust 592. A copy of said Claim No. 38530 is hereto annexed, marked Exhibit O, and made a part hereof. Said claim is made for a balance of $380,761.54, with interest, and sets forth that the American Exchange Irving Trust Company and Sorenson and Nielsen are citizens of the United States and that the
53 claimants are entitled to the payment of this debt claim under the provisions of Section 9 of the Trading with the Enemy Act, and that "no person or persons whatsoever, except as above stated, have any interest in or lien upon the proceeds of the claim set forth in the within notice; that this notice is not filed in collusion with any enemy or ally of enemy, or any other person or persons for the purpose of avoiding the terms and provisions of the Trading with the Enemy Act: that the claim herein referred to is in all respects bona fide and that there are no set-offs, counterclaims or defenses except as herein stated." Said claim was filed by enclosing the same with a letter dated October 27, 1927, addressed to How-
54 ard Sutherland, Alien Property Custodian, signed by Barnes, Avery & Whiting, attorneys for claimants, a copy of which is hereto annexed, marked Exhibit P, and made a part hereof.

On November 12, 1927, a notice of claim pursuant to Section 9 of the Trading with the Enemy Act, Claim No. 38566, was filed by John S. Sorenson and Thorleif S. B. Nielsen, as the surviving partners of the firm of Crossman & Sielcken, a copy of which is hereto annexed, marked Exhibit Q and made a part hereof. This Claim 38566 is identical in both form and substance with Claim No. 38530, herein above referred to, except that the American Exchange Irving Trust Company (formerly known as Columbia Trust Company), Executor of the Last Will and Testament of Hermann Sielcken, deceased, is eliminated as a claimant. Said Claim No. 38566 is also for

a balance of $380,761.54, with interest, for the value of the said cargoes which were the subject-matter of the said claims before the Mixed Claims Commission, United States and Germany, and of the instant suit. Said Claim No. 38566 was transmitted by letter dated November 12, 1927, from R. S. Doyle of the firm of Hopkins, Starr, Hopkins & Hamel, lawyers of Washington, D. C., to the Honorable Howard Sutherland, Alien Property Custodian, Washington, D. C., a copy of which is hereto annexed, marked Exhibit R, and made a part hereof. Mr. R. S. Doyle was a member of the firm of Hopkins, Starr, 56
Hopkins & Hamel, who were associated with Messrs. Barnes, Avery & Whiting in the prosecution of both of these claims, as more particularly set forth in a letter dated November 21, 1929, from Hamel and Doyle, attorneys, Washington, D. C., to Mr. W. H. Pettry, Claims Division, Alien Property Custodian's office, Washington, D. C., a copy of which is hereto annexed, marked Exhibit S, and made a part hereof.

On November 16, 1927, the Alien Property Custodian and the Treasurer of the United States were served with a subpoena and bill of complaint in a suit in equity instituted in the United States District Court for the Southern District of New York, entitled: John S. Sorenson and Thorleif S. B. Nielsen, as the surviving partners 57
of the firm of Crossman & Sielcken, plaintiffs, against Howard Sutherland as Alien Property Custodian, Frank White as Treasurer of the United States, and Zentral-Einkaufs-Gesellschaft m. b. H., defendants. This case was numbered Equity No. 43-296 in the District Court of the United States for the Southern District of New York and was for the recovery of the value of the cargoes which were the subject-matter of the instant suit in the District Court of the United States for the Southern District of New York. On December 6, 1927, an order was filed, on consent, discontinuing said suit in equity without costs and without prejudice.

On December 23, 1927, the Alien Property Custodian and the Treasurer of the United States were served with

a subpoena and bill of complaint in the instant suit in equity instituted in the United States District Court for the Southern District of New York; upon trial thereof a final decree was entered on December 29, 1929, which was satisfied in full and a warrant for the satisfaction of the decree executed by Barnes and Avery on the 10th day of April, 1930, and filed on April 11, 1930, with the Clerk of the United States District Court for the Southern District of New York.

In 1932 Clara Sielcken Schwarz, as alleged residuary legatee under the Will of Hermann Sielcken (of which a copy is hereto annexed as Exhibit B), brought a petition in the Surrogate's Court for New York County against the Irving Trust Company (successor to the Columbia Trust Company), as Executor of Hermann Sielcken, in which she sought to set aside and vacate three decrees settling the accounts of the said Executor entered in 1921, 1922 and 1925. The said petition was referred by the Surrogate to Walter N. Seligsberg, Esquire, as Referee, who heard the evidence and reported his findings and conclusions to the Surrogate. In January of 1935 Brainard S. Avery, member of the firm of Barnes, Avery & Whiting, 100 Broadway, New York City, attorneys in the instant cause of action in the United States District Court for the Southern District of New York, testified as a witness, duly sworn before Referee Seligsberg. In a transcript of the testimony of Brainard S. Avery as reported by Thomas F. Falvey, Reporter, Surrogate's Court, New York County, the material parts of which are hereto annexed, marked Exhibit T and made a part hereof, in reference to the institution of the instant suit in the District Court of the United States for the Southern District of New York, Mr. Avery, having been duly sworn, testified as follows (Referee's Minutes, pages 1847 *et seq.*):

"Q. Whose idea was it to bring the suit in the District Court in the names of Sorenson & Nielsen without mentioning the executor or joining the executor as a party? A. I think it was mine.

"Q. What reason had you for proceeding in that way?

• • • • •

"A. I wanted to make the suit stick.

"Q. What had the omission of the executor from that suit to do with that matter?

• • • • •

"Q. In your judgment? A. At that time, all of 1927, I knew that Mr. Sielcken had died in an enemy country, that under the Trading with the Enemy Act he had an enemy status, that Mr. Sorenson and Mr. 62
Nielsen had no such obstacles to overcome, the executor not being in any better position than Mr. Sielcken himself. • • •

"Q. At the time you prepared that bill, you were familiar, were you not, both with the articles of co-partnership and the will? A. The bill was prepared in the first instance by Mr. Barnes, but we were both familiar with the papers."

The files of the Mixed Claims Commission, United States and Germany, disclose that on December 29, 1922, the Columbia Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and 63
John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Crossman & Sielcken, filed a claim against Germany before the Mixed Claims Commission based on dollar and mark balances due Crossman & Sielcken from the firm of Theodor Wille, Hamburg, Germany. This claim was signed and sworn to by George E. Warren, Vice President of the Columbia Trust Company, and John S. Sorenson and Thorleif S. B. Nielsen, on December 29, 1922. This claim was in the amount of $158,134.73, and asserted:

"V. That pursuant to the provisions of said agreement of co-partnership, upon the death of said Sielcken as aforesaid, said surviving partners Sorenson and Nielsen did transfer and pay over to said

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Columbia Trust Company, as executor as aforesaid, the said capital and also all the property and business of said firm; and that said Columbia Trust Company, as such executor, has ever since been and now is, engaged in liquidating the business of said partnership as if it had been carried on by said decedent in his sole name; and by reason of the foregoing, said Columbia Trust Company, as executor as aforesaid is entitled to collect and receive all the assets and credits of said firm of Crossman &
65 Sielcken, and to prosecute and recover upon any and all causes of action and claims of whatever nature existing in favor of said firm at the time of its dissolution as aforesaid."

The claim was withdrawn on February 2, 1924.

On October 26, 1927, the American Exchange Irving Trust Company (formerly the Columbia Trust Company), as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Crossman & Sielcken, filed a new claim against Germany and the firm of Theodor Wille before the Mixed Claims Commission, United States and Germany, List No. 6207,
66 Docket No. 8304, which said claim included the same debt as in the claim filed December 29, 1922, and a claim for 8,000,000 Marks, and also included therein an item of $177,104.48 which represented one-half of the loss on the cargoes which were seized by the British Naval Authorities in April, 1915, and condemned in the British Prize Court, which cargoes were the subject-matter of the instant suit in the United States District Court for the Southern District of New York. This one-half of the loss was the same one-half which was charged to Theodor Wille on the books of Crossman & Sielcken as a joint account, a copy of which account is hereto annexed, marked Exhibit U, and made a part hereof.

On November 16, 1929, H. H. Martin, counsel for the American Agent of the Mixed Claims Commission, wrote the following letter to Mr. Brainard Avery, member of the firm of Barnes, Avery & Whiting, New York City:

"Receipt is acknowledged of your letter of the 15th instant in relation to the Crossman & Sielcken claims, Docket Nos. 8304 and 8305.

"I note that Dr. Albert arrived in New York on the 12th instant and that on the 14th instant there was a conference in particular relation to the Z. E. G. claim between Messrs. Albert, Hays and Abramson, and Messrs. Barnes, Alger and yourself.

"I also note that Dr. von Lewinski is expected to arrive in New York on the 18th or at least some time next week and that after his arrival it is expected 68
that another conference will be had in relation to this matter.

"As I understand from your letter and from our conference on the 7th instant, the tentative negotiations for settlement of these claims will not have the the effect of withdrawing the Z. E. G. case from the U. S. District Court. As I have heretofore advised you, I feel that any tentative settlement that may be reached affecting the Z. E. G. claim, should be predicated on a finding of the United States Court; that a legal liability existed under the contract between the Z. E. G. and Crossman & Sielcken for the payment of 69
the merchandise involved in the Z. E. G. claim. I am sure that this is also Mr. Bonynge's view of the situation.

"Subject to the foregoing, I do not know of any reason why a settlement in the nature of a compromise of the two claims may not be reached between the parties, so that the two Agents may be in a position to join in a Stipulation recommending an award to the Commission.

"If it is desirable, I am certain that I could arrange to be up in New York next week for the purpose of taking part in the compromise negotiations. This is particularly true if Dr. von Lewinski desires to have someone from this Agency in a conference in which he is taking part."

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On January 9, 1930, Mr. H. H. Martin prepared the following memorandum concerning the proposed compromise settlement of this claim:

"Re: Claims of Crossman & Sielcken, Docket Nos. 8304 and 8305.

"Conference in relation to a proposed settlement of these claims was held this morning. There were present the following gentlemen:

The American Agent; the German Agent; Messrs.
71 Alger, Avery, Barnes and Doyle, of counsel for claimant; Mr. Abramson of the law firm of Arthur G. Hays, Esquire, of counsel for Z. E. G.; Dr. Roth of the staff of the German Agent, and myself.

"After a discussion was had of the Z. E. G. suit in which a judgment in favor of Plaintiffs in the amount of $716,160.37 with interest at the rate of 6% to date of payment was entered in the U. S. District Court for the Southern District of New York on the 30th ultimo in Equity No. E44-28, and a discussion of the connection between this suit that forms the subject-matter of claim, our Docket No. 8305, and a claim in-
72 volving the firm of Theodor Wille, Docket No. 8304, we had a general discussion as to the possibility of finally disposing of both claims.

"The matter of the Z. E. G. suit is somewhat complicated by the existence of the so-called indemnity Agreement under which the German Executors under the Will of Hermann Sielcken, two of whom were the principal partners of Theodor Wille, entered into an agreement with the Z. E. G. following certain arbitration proceedings held in Germany during the war. This Agreement provided in substance that if Crossman & Sielcken did not comply with the settlement supposedly reached in the arbitration proceedings and if they should bring suit in this country to recover moneys alleged to be due Crossman & Sielcken from Z. E. G., then the Estate of Herman Siel-

cken in Germany would reimburse Z. E. G. for any moneys recovered in the suit in this country against the Z. E. G.

"The effect of this Agreement if it is legally binding would be that the judgment obtained in the United States District Court on being collected by Crossman & Sielcken would in turn under the so-called Indemnity Agreement be reimbursed to Z. E. G. out of the Estate of Hermann Sielcken. The value of the Sielcken Estate in Germany is unquestionably in excess of the amount of the judgment recovered. 74
While there is a very serious question, particularly in view of the opinion of Dr. Neumann filed with this Commission, as to the legality of this Indemnity Agreement, nevertheless the Sielcken Estate is faced with a serious and long continued litigation in Germany. This liability unquestionably has a certain value and the Sielcken Estate would seem to be unquestionably justified in arriving at a settlement thereof.

"These facts were fully discussed and the German Agent was clearly given to understand that any settlement that might be negotiated would be on the basis 75
of disposing of all phases of both the Z. E. G. matter and the Theodor Wille matter.

"With these preliminaries cleared away, considerable discussion was then had as to a basis for the settlement of the so-called Wille claim. The German Agent was advised that in so far as the American Agency was concerned it was not interested in the settlement between claimants and the Z. E. G. under this Indemnity Agreement, such settlement being a matter that should be arranged for solely between the interested parties. In this position the German Agent said he fully concurred. Mr. Barnes then said that the Department of Justice through Mr. Rhodes was fully advised as to the possible settlement between Z. E. G. and the liability of the Sielcken Estate under the Indemnity Agreement.

"In the discussion of the Wille claim, it was developed that as a basis for settlement, we could consider that the several accounts between Crossman & Sielcken and Theodor Wille are about balanced with the exception of the so-called bond account, so that the real sound basis for the claim is one against the Government of Germany for depreciation in bonds. In taking this position however it was made clear that neither the American Agent nor the claimants, in case no agreement could be reached, have in any sense receded from their position that in so far as the so-called bond item of the claim is concerned, it is either a claim for depreciation in bonds by reason of the exceptional war measures or else it is a debt claim against Theodor Wille for the reason that there is no definite evidence that the firm of Wille purchased the bonds involved until some time after the Armistice, having in the meantime used the moneys of Crossman & Sielcken for their own benefit. On this phase of the claim if it is to go before the Commission, the American Agent would contend that there was a debt claim as distinguished from a bond claim.

"The bond feature of the claim it was explained involves bonds to a value in excess of M. 6,000,000, is based on the theory that Hermann Sielcken who died in Germany in October, 1917, left a will under which he provided that the business of his firm, Crossman & Sielcken was to be promptly liquidated and the assets distributed in accordance with the Articles of Co-Partnership. In this situation there was an obligation on the part of the firm of Wille to promptly transmit the property of Crossman & Sielcken that it was holding to New York for use in the liquidation of the New York firm. This duty was prevented from being fulfilled by the exceptional war measures of Germany and instead of the money and bonds being sent over promptly following the death of Hermann Sielcken, they were collected together and reported to the Treuhander in March, 1918, and remained under

his control and direction until they were finally turned over in the latter part of 1921. On the theory that when the property was reported to the Treuhander it would as a matter of fact, had there been no war, have been sent over to New York, the least that we would be entitled to receive is the depreciation in the value of this property between March, 1918 and January, 1920, representing the depreciation on this basis of 17¢ plus.

"On this basis our claim on the bond item amounts to $1,117,655.00 damages for depreciation. This is 80
likewise substantially the amount that we would be entitled to recover if the claim were presented on the basis of a debt from Wille based on his use of the money and failure to invest in bonds for the account of Crossman & Sielcken until some time after the war, which situation we insisted might be developed through an audit of the Wille books.

"'After some further discussion of the matter, the German Agent said that he would, before taking a definite position, like to discuss the subject-matter of both claims with his counsel, and with Mr. Abramson. These three gentlemen thereupon withdrew. 81

"In the course of about a half-hour they returned and the conference was continued. After some preliminary discussions to clear up with the German Agent the basis of our item of $1,117,655, he said that while he was not authorized to settle the claims at this time, he would nevertheless recommend to Berlin that he be given authority to settle this Wille claim on the basis of 60% of the amount named above, together with interest thereon at 5% from April 1, 1918, this to be conditioned on a settlement between the Sielcken Estate and the Z. E. G. of the liability of the Sielcken Estate under the Indemnity Agreement above referred to.

"Settlement on this basis was acceptable to claimants with the understanding that claimants and Mr.

Abramson were to meet this afternoon with a view to arriving at a settlement under the so-called Indemnity Agreement. As soon as the basis of such settlement is worked out, the German Agent is to be advised and he will then write to Berlin the full details of the claims and recommend that he be given authority to finally consummate the settlement.

"Mr. Avery said that he had the verbal authority from the heirs of Hermann Sielcken authorizing him to settle on the basis about outlined, but that he would
83 like to have a confirmation thereof in writing. He thereafter asked as to the advisability of cabling the Sielckens for definite authority to settle. It was, however, suggested that under the circumstances, he postpone any further communications with the Sielcken heirs until the German Agent receives instructions from Berlin to proceed further. This arrangement was satisfactory to all parties.

"The German Agent said that it would take about three weeks before he could hear from Berlin, but that he would request instructions be cabled.

"Settlement on this basis will mean that in the Z. E.
84 G. case Mr. Hays as attorney for the Z. E. G. will advise the Department of Justice that he does not care to proceed further with an appeal. This will mean that the judgment of the District Court may then be satisfied out of funds in the possession of the A. P. C.

"The Z. E. G. claim before the Commission, Docket No. 8305, will then be withdrawn.

"In the Theodor Wille claim, Docket No. 8304, that will on an Agreed Statement recover an award of $670,593.00 together with interest at 5% from April 1, 1918, against the German Government on account of damages arising out of the application to the bonds in the possession of the firm of Theodor Wille of exceptional war measures, the German Agent is

to advise us promptly as to the instructions he receives from Germany.

"Settlement of the Wille claim on the basis above outlined will mean that the value of the award as of the present time will be say $1,052,663.37. In addition, claimants will receive under the judgment in the District Court $716,160.37 as of December 30, 1929, less such an amount as may be agreed upon between claimants and the Z. E. G. in satisfaction of whatever rights Z. E. G. may have against the Estate of Sielcken under the Indemnity Agreement."

On March 17, 1930, Mr. H. H. Martin prepared the following memorandum concerning a new proposed compromise settlement of this claim, which reads as follows:

"Re: Claims of Crossman & Sielcken, Docket Nos. 8304 and 8305.

"Reference is made to my memorandum in relation to these claims dated January 9, 1930, covering conference re proposed settlement thereof.

"The German Agent advised me this morning that he was in receipt of instructions from Berlin to the effect that the proposed settlement of these claims as reached at our conference on January 9, 1930, and recommended by him to Berlin was not acceptable to his Government but that he had authority to further discuss the questions involved, with a view to arriving at a settlement that would be acceptable to his Government.

"The German Agent further suggested that Mr. Hayes and Mr. Abramson, of counsel for the Z. E. G., were in Washington and that he understood that Mr. Avery, of counsel for claimants, was also in the City. He said that he would be glad to have a conference this afternoon.

"In accordance with the foregoing, arrangements were made to hold the conference at 2:30 P. M. this

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day. At this conference there were present the German Agent, Messrs. Alger, Avery, Barnes and Doyle, of counsel for the claimant, Messrs. Hayes and Abramson, of counsel for the Z. E. G., Dr. Roth, of the staff of the German Agent, and myself.

"The conference was opened with the statement from the German Agent that the recommendation for settlement arrived at had been rejected by the Foreign Office. This office raised two principal objections thereto, (1) that in the settlement of January
89 9, 1930, a rate of exchange on depreciation in bonds had been taken at a materially higher rate than had heretofore been allowed in any claim by the Commission; (2) that the proposed basis of settlement, namely, 60% of the original claim as arrived at in the settlement of January 9, 1930, was too high.

"The German Agent pointed out that the rate of exchange from March, 1918, 19.2 cents, was almost the peak of exchange following the entry of this country into the war; that the usual rate adopted by the Commission in these bond claims was the rate for November, 1917, 14.4 cents.

90 "The German Agent said that under his instructions the best offer he could make was 50% instead of 60% of the original amount of the bond claim, with interest from April 1, 1918; that if this was not acceptable to the claimants, it would mean that the claim would have to be settled by the Commission and that he would then make the contention that the most claimants were entitled to recover was on the basis of the rate of exchange for November, 1917.

"The German Agent having made this statement suggested that he and his counsel, together with Messrs. Hayes and Abramson would withdraw from the conference in order that attorneys for claimants might be free to discuss the matters involved, with this Agency.

"After the withdrawal of these gentlemen considerable discussion was had on the questions involved. It was pointed out that the proposed settlement reached January 9, 1930, was based on a total amount of damages arising out of the bonds involved in the Wille claim of $1,117,655.71, together with interest thereon from varying dates. This item is made up of the following:

(1) $1,062,715.31, with interest at 5% from March 24, 1918, covering the M. 6,000,000 odd bonds involved; 92

(2) $16,990.40, with interest at 5% from November 1, 1918, involving a portion of the Peiman-Zeigler securities;

(3) $37,950.00, with interest at 5% from June 30, 1919, involving the remainder of the Peiman-Zeigler securities.

"In the settlement of January 9, 1930, the German Agent agreed to recommend that he be authorized to make settlement on the basis of 60% of the above amount with interest at 5% from April 1, 1918. This implied an award of $670,593.43, with interest at 5% 93 from April 1, 1918.

"The settlement as now proposed on the 50% basis implies an award of $558,827.85.

"After considerable discussion the attorneys for claimants reached the conclusion that they would accept the revised offer of the German Agent with the understanding that claimants are furnished with a general release by the firm of Theodor Wille covering claims that this firm may have against them, particularly arising out of the Z. E. G. transactions.

"After reaching this conclusion, we again conferred with the German Agent and his counsel, Messrs. Hays and Abramson being present, and advised the German Agent that subject to approval of

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claimants, the attorneys would accept the revised offer.

"In order to make it a matter of record, the German Agent is to write us a letter informing us that his recommendation of January 9, 1930, was not approved by his Government but that he would make an offer to settle on the basis of an award of $558,827.85, with interest at 5% from April 1, 1918, covering the so-called Wille claim, and that a general release would be given by Wille to claimants."

95 On March 24, 1930, Arthur Garfield Hays, attorney for the Zentral-Einkaufs-Gesellschaft, wrote to the Honorable, The Attorney-General, Washington, D. C., Attention: Mr. Rhodes, advising that the Zentral-Einkaufs-Gesellschaft would not take an appeal from the decree. A copy of said letter is hereto annexed, marked Exhibit V, and made a part hereof.

As a result of the compromise settlement consummated on March 17, 1930, whereby the claim before the Mixed Claims Commission would be settled on the basis of 50%, a stipulation was presented to the Mixed Claims Commission, United States and Germany, and based thereon
96 on April 21, 1930, an award was entered in favor of the claimants whereby the Government of Germany was obliged to pay to the Government of the United States on behalf of the claimants, and the Government of the United States would pay to the claimants out of the German Special Deposit Account the sum of $558,827.85, together with interest thereon at the rate of 5% per annum from April 1, 1918, to the date of payment.

The distribution of the proceeds of the award of the Mixed Claims Commission and of the amounts received in satisfaction of the decree entered by this Court in the instant suit in the Southern District of New York is set forth in two letters, the first dated March 27, 1930, from Earl B. Barnes and Brainard Avery to Arthur Garfield Hays, Esquire, 43 Exchange Place, New York City, a copy of which is hereto annexed, marked Exhibit W, and

made a part hereof, which contains the following endorsement at the end thereof: "The foregoing is in accord with my understanding of the terms of settlement hereinabove described: (S) Arthur Garfield Hays, Zentral Einkaufsgesellschaft, by Arthur Garfield Hays, Attorney in Fact," and also endorsed at the end thereof, as follows: "New York, 100 Broadway, March 27, 1930, To Messrs. Brainard Avery and Earl B. Barnes. You are hereby authorized and directed to sign and deliver the foregoing letter. (S) Clara Sielcken Schwarz, by (S) Alex Wendroth Sielcken, Attorney in Fact," and further endorsed: 98
"Approved, Irving Trust Company, by (S) Orrin R. Judd, Vice President, as Executor of the Will of Hermann Sielcken, deceased."

On April 17, 1930, a letter from O. R. Judd, Vice President of the Irving Trust Company of New York, to Leonard B. Smith, Esq., 128 Broadway, New York City, attorney for the Irving Trust Company of New York, with the notation that a copy was sent to Mr. Avery, of the firm of Barnes, Avery & Whiting, attorneys for the plaintiff, and a copy to Mr. Hotchkiss, of the firm of Davies, Auerbach & Cornell, attorneys for the Irving Trust Company, sets forth that the plaintiff Sorenson was demanding possession of the funds from his attorney, 99
and states:

> "Mr. Avery having made the suggestion that he thought Mr. Hotchkiss would be very helpful in getting the money and securities paid over to the Estate, avoiding the danger of threatened litigation and consequent delay, conferred with Mr. Hotchkiss and on April 10th Mr. Hotchkiss cabled Mrs. Schwarz as follows:
>
> > "'For the protection of the late recoveries Avery suggests that he be retained as counsel by Irving as executor and for me to be associated with him in that retainer stop Averys attitude is that his prior retainer will be fulfilled when all moneys are received and his thought is that they

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should be paid to Irving without passing through the hands of Sorenson liquidator who is now demanding possession of the funds stop Irving undoubtedly will retain Avery and myself if you request stop Will this interfere with Leonard Smiths relations to you or the Irving stop Confer with Alex cable answer.' "

Copy of the above letter is hereto annexed, marked Exhibit X, and made a part hereof.

101 The second letter, dated April 24, 1930, addressed to Messrs. Crossman & Sielcken in Liquidation, Mr. John S. Sorenson and Mr. Thorleif S. B. Nielsen, Liquidators, signed by Brainard Avery, a copy of which is hereto annexed, marked Exhibit Y, and made a part hereof, reports the proceedings at the Irving Trust Company and sets forth the distribution of the proceeds of the instant suit in the Southern District of New York and the proceeds of the award to the claimants before the Mixed Claims Commission, United States and Germany.

The testimony of Brainard S. Avery in the proceedings before Referee Walter N. Seligsberg, annexed hereto and marked Exhibit T, sets forth in detail the facts sur-
102 rounding the filing of the claims with the Alien Property Custodian and the institution of the instant suit in this Court; the institution and filing of the Memorial of the claimants before the Mixed Claims Commission, United States and Germany; the agreement made with the representatives of the German Foreign Office in Berlin in March of 1928; the arrangement that the Z. E. G. default or enter an appearance and submit to the jurisdiction of this Court as a respondent in this action; the filing of an answer by the defendant Zentral-Einkaufs-Gesellschaft m. b. H.; the trial of this cause before the Honorable Francis G. Caffey, United States District Judge for the Southern District of New York; the entry of the decree in December of 1929; the presence of Mr. Orrin R. Judd, Vice President of the Irving Trust Company, at the trial; the arrival in January of 1930 of

the German Agent, von Lewinski; and the meetings in Washington at different times leading up to the performance of the tentative agreement arrived at in Berlin in April of 1928. Particular reference is made to the testimony of Mr. Avery on pages 1661, 1662 and 1663 of Exhibit T, testimony of Brainard S. Avery before Walter N. Seligsberg, Referee, "Dr. von Lewinski said that he remembered that the judgment of Solomon had been agreed to in Berlin of dividing the baby," and further, "Von Lewinski's reply was that he thought he had a gentlemen's agreement, but he was not certain what a 104
gentlemen's agreement with a lady meant. Finally, it went through exactly as it was arranged in Berlin," and further:

"Referee: There had been an agreement then, in Berlin on an amount of Marks that was due somebody over here?

"Witness: Not quite. The agreement was that right straight through there should be an even division, even extending to the moneys in possession of the A. P. C.

"Referee: Even division between whom? That is what I cannot get into my head. 105

"Witness: The estate was to take one-half and the Germans were to get the other half, or to be released from the other half of the—

"Referee: In other words, there was to be an agreement on the claim, and the German Government was claiming either 60 per cent or 50 per cent?

"Witness: Or to receive 50 per cent, because they received one-half of this Z. E. G. money which came from the A. P. C., and they paid one-half of the settlement which was necessary to make with the house of Theodor Wille."

Thorleif S. B. Nielsen died in September, 1930, and the Chase National Bank of the City of New York, as Ancillary Executor of the Last Will and Testament of Thorleif S. B. Nielsen, deceased, brought an action

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against John S. Sorenson, Irving Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, Clara Sielcken Schwarz, and others, who were not served and all other persons who have or claim to have any interest whatever in the assets of Crossman & Sielcken, which persons, if any there be, and the names thereof, are unknown to the plaintiff, in which suit a judgment was entered in the New York Supreme Court for the County of New York on the 11th day of November, 1933, upon the report of Referee
107 Henry F. Wolff, Esquire, duly appointed by the New York Supreme Court for the County of New York. A copy of said judgment is hereto annexed, marked Exhibit Z, and made a part hereof, and particular attention is called to the following extract therefrom:

"Now, on motion of Avery & Whiting, attorneys for said defendant, Clara Sielcken-Schwarz, it is

"Adjudged that upon the death of said Hermann Sielcken on October 8th, 1917, by virtue of the terms of a certain partnership agreement dated June 2nd, 1913 (a copy of which is attached to the complaint herein), between said Sielcken and said John S.
108 Sorenson and said Thorleif S. B. Nielsen and by virtue of the terms of said Sielcken's will dated March 23rd, 1914, and admitted to probate by the Surrogate's Court of the County of New York on the 26th day of January, 1918, the sole right to liquidate the partnership assets and property of the firm of Crossman & Sielcken was vested in the executor named in said will, now said defendant, Irving Trust Company, and under the terms of said instruments no other person was lawfully entitled to be such liquidator. It is further

"Adjudged that neither the plaintiff's testator, Thorleif S. B. Neilsen, nor said defendant, John S. Sorenson, is now or at any time since the dissolution of said firm of Crossman & Sielcken by the said

death of said Hermann Sielcken on October 8th, 1917, has been a liquidating partner thereof."

The files of the Supreme Court, New York County, further disclosed that the final judgment was entered in said case, Index No. 28047 1931, on November 8, 1937, upon the judgment entered therein on the 11th day of November, 1933, a copy of which final judgment is hereto annexed, marked Exhibit AA, and made a part hereof. Copies of the releases executed by the said Nielsen and the said Sorenson, dated December 22, 1917, are hereto annexed, marked Exhibits BB and CC and made a part 110 hereof.

The files of the Surrogate's Court for the County of New York disclose that on December 13, 1937, in the matter of the Judicial Settlement of the Account of the proceedings of the Irving Trust Company, as Executor of Hermann Sielcken, deceased, an Intermediate Account of Proceedings of the Executor to December 1, 1937, was filed by the Irving Trust Company, as Executor of Hermann Sielcken, deceased, by John F. McIlwain, Assistant Secretary, and annexed thereto Schedules A to K contain the information required by Rule 10, Subdivision 7, Rules of the Surrogate's Court, New York County. On page 53 111 of said account, Schedule I, page 2, is set forth the following:

"In May, 1927, subsequent to the rendition of the voluntary account and its approval by her, the sole residuary legatee, Clara Sielcken Schwarz, then the only person interested in the estate, other than this Executor, announced that she had discovered certain additional assets of the firm of Crossman & Sielcken, which had been until then wholly unknown to this executor and which were not shown on the firm books or in its files, consisting of two certain claims (which she asserted belonged to the former firm of Crossman & Sielcken, of whose assets the decedent's estate was then the sole owner) all evidences of which were in Germany, one against the Zentral

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Einkaufs Gesellschaft, a German governmental corporation, and the other against the firm of Theodor Wille of Hamburg, Germany.

"Without revealing to the Executor the exact nature of these claims, Mrs. Sielcken Schwarz then arranged with the Executor, which then held no funds available for that purpose, that she would prosecute these claims in its name (or otherwise as she might be advised), at her own cost and by such attorneys as she might employ for that purpose.

113 "Pursuant to this arrangement she, about November, 1927, brought a suit in the United States District Court for the Southern District of New York in the names of Thorleif S. B. Nielsen and John S. Sorenson, as surviving members of the said former firm of Crossman & Sielcken against said Zentral Einkaufs-Gesellschaft, and the Alien Property Custodian and the Treasurer of the United States (which two officials then held very large sums belonging to said Zentral Einkaufs-Gesellschaft), and on the 30th day of December, 1929, obtained and entered a decree of that Court in that suit awarding to the

114 plaintiffs therein (Sorenson and Nielsen as surviving partners of Crossman & Sielcken) the sum of $716,160.37 against said Zentral Einkaufs-Gesellschaft, and directing that it be paid by the defendants Alien Property Custodian and Treasurer out of property of said Zentral Einkaufs-Gesellschaft in their hands.

"Concurrently with that suit, she had instituted a proceeding before the Mixed Claims Commission—United States and Germany, against Germany and the Zentral Einkaufs Gesellschaft, in the joint names of Sorenson, Neilsen and this executor, upon the same claim that was set up in the District Court suit. This proceeding was withdrawn as part of the 1930 compromise described below.

"About the same time that she began those proceedings she also instituted a proceeding before the Mixed Claims Commission—United States and Germany, in the joint names of said Nielsen, said Sorenson and this Executor (as the sole persons interested in the claim), against Germany and the firm of Theodor Wille of Hamburg, Germany, to recover several millions of dollars.

"In the spring of 1930, the time to appeal from the said decree of the United States District Court had not expired, and there was most serious question 116
whether it was not reversible for error as to the right of Sorenson and Nielsen to maintain the suit as plaintiffs; and the claims against Germany and the firm of Theodor Wille were being disputed; the said Clara Sielcken Schwarz, then, with the approval of this executor, on March 27, 1930, entered into a compromise of all these three claims, by which no appeal should be taken from the said decree of the United States District Court; and that judgment should be paid, and the claim before the Mixed Claims Commission—United States and Germany, against Germany and the Zentral Einkaufs Gesell- 117
schaft should be discontinued and dropped; and in addition an award should be made by the said Mixed Claims Commission on the claims before it against Germany and the firm of Theodor Wille, to the said claimants before it, of the sum of $558,827.85 and interest thereon at 5 per cent per annum from April 1, 1918. Such award was accordingly made by the Mixed Claims Commission—United States and Germany, to said Nielsen, said Sorenson and this executor on April 21, 1930.

"By the terms of that compromise it was further provided that one-half of the sum recovered under that District Court decree should be paid over by the plaintiffs in that suit to the Zentral Einkaufs Gesellschaft, and that $50,000 additional should be paid,

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out of their half of that recovery, by the plaintiffs, to the firm of Theodor Wille; and that an expense of $200 connected with the transfer from Washington to New York of the United States Treasury 3½ per cent notes received in part payment of that decree, should be shared $100 by the plaintiffs in that suit and $100 by the said Zentral Einkaufs Gesellschaft.

"A true and correct copy of such compromise agreement is hereto annexed marked Exhibit A and hereby made a part of this Schedule I.

119 "In accordance with such compromise agreement, full payment of the sum awarded by said District Court decree and accruing interest thereon from the date of the decree was made in April, 1930, to Thorleif S. B. Nielsen and John S. Sorenson as surviving members of Crossman & Sielcken (the plaintiffs in that suit), as follows:

"In United States Treasury 3½% Notes	$459,200.00
In Cash	267,481.40
Total	$726,681.40

120 "The sum of $726,681.40 represented

principal of claim	$380,761.54
interest to date of decree	335,398.83
interest after decree	10,521.03
	$726,681.40

"Of the $335,398.83 interest included in the judgment $278,889.94 accrued subsequent to the death of Hermann Sielcken on October 8th, 1917. The amount of the claim sustained by the court was thus at Sielcken's death $437,270.43, or 61½ per cent of the amount of the judgment.

"Out of the sums so received, there was paid in accordance with such compromise:

"The expense of bringing the securities to New York	$ 200.00

To Zentral Einkaufs-Gesellschaft:

In said United States Treasury Notes	$229,200.00	
Cash as owelty on the division made of the Treasury notes	400.00	
Half the $267,481.40 cash received (less $100 half the expenses of bringing the securities to New York	133,640.70	363,240.70
		122
To Theodor Wille		50,000.00
		$413,440.70

Leaving as the gross recovery by the firm from this claim as per such compromise:

Cash (deposited in the Three Name Account)	83,240.70
United States Treasury 3½% notes (delivered to the Executor)	230,000.00

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"The Wille claim, pursuant to such compromise, resulted in an award to Sorenson, Nielsen and this Executor jointly, by the Mixed Claims Commission—United States and Germany, of date April 21st, 1930, of:

"Principal as of April 1, 1918	$558,827.85
Interest from April 1, 1918, to January 1, 1928	272,524.27
Total	$831,352.12

"Discounting the $558,827.85 of April 1, 1918, as of October 8th, 1917, we have a face value of the principal *awarded* as of the death of Sielcken of $543,274.71 (or 65 1/3 per cent of the total award of $831,352.12) as the amount of the claim at the time of Sielcken's death.

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"All payments so far made on account of this award have been applied by the United States Treasurer upon this sum of $831,352.12 and none on subsequently accruing interest.

"From each such payment made by him the Treasurer of the United States deducted his statutory commission of one-half per cent before remitting.

"The payments so made are as follows:

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"1930	Credit Against Award	Treasurer's Commission	Actual Payment Received
June 2	$468,713.25, less ½%	$2,343.56	$466,369.69
Nov. 12	43,516.66, less ½%	217.58	43,299.08
1931			
Apr. 28	$ 28,721.00, less ½%	$ 143.61	28,577.39
1932			
Jan. 8	$ 78,408.33, less ½%	$ 392.04	78,016.29

"(This last warrant for $78,408.33 was issued October 9th, 1931, but Mr. Sorenson refused to endorse it until January 8th, 1932.)

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"The balance of this award remains wholly unpaid. The statement from the United States Treasury Department of November 22nd, 1937, shows a balance of the original amount of the award still due of $211,992.88
plus interest therein accumulated to March 31, 1937, of 180,389.55
none of which has been paid.

"No later statement has been received from the Treasury Department and no further payment has been made on this award. Whether any further payments will ever be received is highly problematical. (See letter from the Treasury Department in Schedule B-1.) [This affidavit, page 31.]

"All the cash so received in the settlement on both claims was deposited with the Irving Trust Company (as bank and not as executor) to the credit of said Sorenson and said Nielsen, but withdrawals therefrom could be made only by checks countersigned by the Executor. This bank account is commonly called the 'Three Name Account.'

"Sorenson and Nielsen's Executor (Nielsen died in September, 1930) claimed to be each entitled to 12½ per cent of both these recoveries, as profits of the firm. 128

"Four 'Export Managers' of the former firm, T. Weitling, Budelmann, James W. Smith and Kirkpatrick, each claimed to be entitled pursuant to their contracts of employment by the firm, to ten per cent of the recovery on the claim against the Zentral Einkaufs Gesellschaft as profits of their department.

"One Stewart also claimed to be entitled to 20 per cent of that recovery, as an attorney employed to prosecute a claim at one time asserted in the name of the firm *against Great Britain,* for its seizure of the cargoes, the price of which cargoes was the subject of the recovery from the Zentral 129 Einkaufs Gesellschaft, as the purchaser thereof, by the District Court suit and the compromise of that judgment.

"These various claims against these partnership assets—covering 85 per cent of the recovery on the Zentral Einkaufs Gesellschaft and 25 per cent of the award of the Mixed Claims Commission—were asserted in a series of suits begun by such various claimants, and involved the executor in heavy litigation, to defeat the claims so asserted against these partnership assets.

"Sorenson also in 1930, in the same connection, advanced the claim that, as sole surviving member of the former firm, he was entitled to liquidate the

assets of the firm, and, by steps attempted to be taken by him in that alleged capacity, he involved the executor in additional litigation. Sorenson also assumed to make federal income tax reports in the name of the firm in accordance with his own claims that these recoveries were profits of the firm, in which he was entitled to share. These reports led to the Federal income tax proceedings settled in 1934.

"The claims of Sorenson and Nielsen's Executor to these recoveries, and Sorenson's claim to be entitled as surviving partner to liquidate the affairs of Crossman & Sielcken, were all asserted in one action and were all finally determined invalid, after a long trial, by a judgment of the Supreme Court for New York County entered on November 11th, 1933 in the action brought by the Chase National Bank as Ancillary Executor of Thorleif S. B. Nielsen, deceased, against John S. Sorenson, Clara Sielcken-Schwarz and this executor (and others who were never served in the action or appeared therein).

"The balance of the fund in the Three Name Account was thereupon transferred to the executor. In the interim some payments had been made out of the 'Three Name Account' by the Executor (with the co-operation of Sorenson and Nielsen or his executor) on account of expenses incurred in the recovery by the firm of the claims against Wille and the Zentral Einkaufs Gesellschaft."

The files of the Department of Justice disclose that the proceeds of the satisfaction of the decree in the instant suit in the United States District Court for the Southern District of New York, totalling $726,681.40, consisting of $267,481.40 cash and $459,200 United States Treasury Notes, were placed in a joint account at the Central Hanover Bank and Trust Company, New York City, for the account of Brainard S. Avery, attorney for the plaintiffs, and Arthur Garfield Hays, attorney for the defendant

Zentral-Einkaufs-Gesellschaft m. b. H., and said proceeds were equally divided between said Avery and said Hays.

A report of Special Agent C. A. Herring of the Federal Bureau of Investigation of the Department of Justice, dated January 31, 1938, in the files of the Department of Justice, states:

"On January 24, 1938 the writer interviewed Mr. Arthur Garfield Hays and Mr. William Abramson, partner in the firm of Hays, St. John, Abramson and Schulman, 120 Broadway, New York City, who advised that their files in the suit of John S. Sorenson, and Thorlief S. B. Nielsen, as surviving partners and liquidating agents of the firm of Crossman and Sielcken vs. Howard Sutherland, as alien property custodian and Frank White, treasurer of the U. S. and the Zentral Einkaufs Gesellschaft (Imperial German Government Central Purchasing Agency), Equity No. 4428, U. S. District Court, Southern District of New York, were located in their warehouse and that it would take two or three days to have these files brought to their office. They stated that they could not furnish definite figures concerning the distribution of funds received in the settlement of this case until they could refer to their files. This law firm represented the Zentral Einkaufs Gesellschaft in this suit. 134 135

"On January 27, 1938, the writer again contacted Mr. William Abramson, who advised that his files disclosed that as a result of an agreement reached in the claim of Sorenson and Nielsen against the Zentral Einkaufs Gesellschaft and THEODOR WILLE and Company before the Mixed Claims Commission the following cash and bonds were paid by the alien property custodian to Brainard Avery and Earl G. Barnes, attorneys for Sorenson and Nielsen, about April 1, 1930: Treasury check $267,481.40; Treasury notes $459,200; Total $726,681.40.

"Mr. Abramson stated that these funds were placed

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in a joint account of Avery and Hays at the National Metropolitan Bank, Washington, D. C., and were transmitted to the Central Hanover Bank and Trust Company, New York City, for the account of these individuals.

"Mr. Abramson advised that the above cash and Treasury notes were divided equally between Avery and Hays and that after deducting $50,000 which was deposited on April 23, 1930 with the J. Henry Schroeder Banking Corporation, New York City,
137 for the account of Theodor Wille and Company, Santos, his firm received a net amount of cash in the sum of $84,040.70. He stated that his firm received 1/2 of the Treasury notes or $229,600, and that on or about April 25, 1930 these Treasury notes were sold through the brokerage firm of Munds and Winslow, New York City, and that on April 25, 1930 they received the proceeds of $229,807.38 from the sale of these Treasury notes. This made total cash of $313,847.08. He stated that his firm deducted fees and expenses of $26,999 and on April 26, 1930 deposited the balance of $286,848.08 in the account
138 of Reichs Kredit Gesellschaft, A. G., Berlin, Germany, at the Equitable Trust Company, New York City.

"Mr. Abramson advised the writer that his law firm represented the Zentral Einkaufs Gesellschaft in this matter at the request of Dr. Heinrich F. Albert, Berlin, Germany. He stated that his firm received a letter from Dr. Albert dated April 14, 1930, at Berlin, Germany, instructing them to deposit $100,000 with the J. Henry Schroeder Banking Corporation, New York City, for the account of Theodor Wille and Company, Santos, also instructing them to deduct $25,000 for attorney's fees and instructing them to deposit the remainder of $288,847.08, less expenses, in the account of the Reichs Kredit Gesellschaft, A. G., Berlin, Germany, at the Equitable Trust Company, New York City."

Out of the other one-half of the amounts received in satisfaction of the said decree in the instant cause in the Southern District of New York and paid to said Brainard S. Avery, attorney for the plaintiffs, $50,000 was paid to said Arthur Garfield Hays to be applied in payment of one-half of the sum to be paid to said Theodor Wille, Santos, and cash in the amount of $83,240.70 was deposited in an account of John S. Sorenson and Thorleif S. B. Nielsen, with the Irving Trust Company, as a bank and not as Executor, with a restriction on the deposit that withdrawals therefrom were to be made by said 140
Sorenson and Nielsen only by checks countersigned by the Irving Trust Company, as Executor of Hermann Sielcken. The balance of one-half of the proceeds of the recoveries in the instant suit, namely $230,000 in United States Treasury Notes, was delivered by said Brainard S. Avery to the Irving Trust Company, as Executor of Hermann Sielcken, deceased.

The award by the Mixed Claims Commission, United States and Germany, to the Irving Trust Company, as Executor of Hermann Sielcken, deceased, jointly with said Sorenson and said Nielsen, was in the total amount of $831,352.12, of which the Treasurer of the United States 141
paid to the said Executor the sum of $616,262.45, including interest to January 8, 1932, and less one-half of one per cent commission deducted by the Treasurer of the United States. The payment of the balance of the award of the Mixed Claims Commission by the Treasurer of the United States to the Irving Trust Company, Executor of Hermann Sielcken, deceased, is dependent upon contingencies set forth in a letter of the Assistant Commissioner of Accounts and Deposits, United States Treasury Department, dated November 22, 1937, to Duer, Strong & Whitehead, attorneys for the Irving Trust Company, as Executor of Hermann Sielcken, deceased. A copy of the said letter is as follows:

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"Treasury Department
Office of the Secretary
Washington

"Commissioner of
Accounts and Deposits

November 22, 1937.

Duer, Strong and Whitehead,
15 Broad Street,
New York, New York.

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Gentlemen:

Receipt is acknowledged of your letter of November 16, 1937, requesting information with respect to further payments out of the German Special Deposit account, on account of the award made to Crossman and Sielcken by the Mixed Claims Commission, United States and Germany under Docket No. 8304.

(a) The amount on deposit in the German Special Deposit Account or available thereto is approximately $19,800,000, which the Secretary of the Treasury will have to disburse in accordance with the priorities established in Section 4 of the Settlement of War Claims Act of 1928.

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(b) The Secretary of the Treasury has received no official notice from the Secretary of State of the final disposition of applications of the Black Tom claimants. The Treasury is not in a position to state when these claims will be disposed of.

(c) If the so-called sabotage claims are disallowed and the funds available to the German Special Deposit Account are distributed, the American claimants holding Class 3 awards (awards in excess of $100,000) would be entitled to an additional payment under priority No. 5 of approximately 5% on balance due on principal account (award plus interest to January 1, 1928) and a payment under prior-

ity No. 8 of approximately 22% on the interest accrued from January 1, 1928 to March 31, 1937. On this award the dollar amounts would be approximately as follows:

5% of balance of unpaid principal of $211,992.88	$10,599.64
22% of interest accrued from January 1, 1928 to March 31, 1937, aggregating $180,389.55	39,685.70

If, however, the sabotage claims are allowed, there 146
would be no funds available for distribution after these claimants were paid the same percentage as other Class 3 claimants.

(d) After the distribution of the reserve fund referred to above, no further funds will be available to the German Special Deposit Account until the Government of Germany resumes payments on the reichsmarks bonds deposited with the Treasury under the debt funding agreement of June 23, 1930.

No payments have been received on these bonds since 147
September 30, 1931.

Very truly yours,

(Signed) M. COLLINS.
M. COLLINS,
Assistant Commissioner of
Accounts and Deposits."

On January 14, 1938, the Attorney-General of the United States, as successor in interest to the Alien Property Custodian, filed in the Surrogate's Court for New York County a Petition for Leave to Intervene, on behalf of the United States, in the matter of the Judicial Settlement of the Account of the Proceedings of the Irving Trust Company, filed by it as Executor of the Estate of Hermann Sielcken, deceased, on December 13, 1937. As set forth on pages 24 to 28 of this affidavit, said Executor therein seeks to account before the Sur-

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rogate for the moneys received by it as a result of the decree entered by this Court in this case.

On April 21, 1938, Mr. Surrogate Foley handed down an opinion granting the application of the Attorney-General in its entirety. A copy of said opinion is attached hereto, made a part hereof, and marked Exhibit DD.

Upon examination of the foregoing facts and the exhibits hereto annexed in support thereof, it therefore appears:

149 1. That the said plaintiffs brought this cause in this Court as alleged surviving partners of the firm of Crossman & Sielcken in pursuance of Section 61 of the partnership law of the State of New York, whereas, in fact, upon the death of the said Hermann Sielcken on October 8, 1917, and pursuant to the terms of the partnership agreement between Sielcken and said plaintiffs, and in accordance with Section 68 of the partnership law of New York as well as by virtue of the terms of Sielcken's will, the sole right to liquidate the partnership assets and the property of the said firm of Crossman & Sielcken was, at all times since the death of the said Sielcken, vested sole-
150 ly in the said Executor named in his will; that under the terms of the said partnership agreement and the said will neither Sorenson nor Nielsen was lawfully entitled to act as liquidator or as liquidating partner of the said firm; that under the terms of a settlement made by the firm of Crossman & Sielcken, in liquidation, with each of said plaintiffs, on or about December 23, 1917, neither said Sorenson nor said Nielsen had thereafter any claim whatsoever to, or interest in, the assets or profits of said firm; and that by a Judgment entered on November 11, 1933, the Supreme Court of New York for the County of New York has so determined.

2. That immediately after the effective date of the Trading with the Enemy Act, October 6, 1917, the Alien Property Custodian seized all of the assets of the firm of Crossman & Sielcken, and title thereto became vested in the United States, and thereupon the said Sorenson

and said Nielsen were divested of all right, title and interest which they may have had in and to said assets of the firm of Crossman & Sielcken, individually, or as surviving partners; that by the allowance in 1921 in purported pursuance of Section 9 of said Act, of the claim of the Columbia Trust Company, as Executor of Hermann Sielcken, all right, title and interest of the Alien Property Custodian in the interest of Hermann Sielcken in the Liquidation of Crossman & Sielcken was ordered returned to the Columbia Trust Company, as Executor; that therefore said Sorenson and said Nielsen had no 152
standing under said Act to file a Notice of Claim for said debt or institute the instant suit upon said claim.

3. That the said plaintiffs nevertheless instituted this suit upon the said claim under Section 9 of the Trading with the Enemy Act in their alleged capacity as surviving partners of the said firm of Crossman and Sielcken in order to "make the suit stick," with full knowledge that the said Executor was the sole owner of the alleged debt which was the basis of the said claim, and of this suit, but was precluded from filing any claim therefor with the Alien Property Custodian upon which a proper suit under Section 9 of the said Act could be brought by 153
reason of the fact that the deceased testator, Hermann Sielcken was an enemy; that the Executor of said Sielcken was at all times, and still is, within the prohibition of the said Act against the filing of claims by enemies or by their Executors or Administrators, for debts alleged to be due them out of property seized and held by the Alien Property Custodian.

4. That said plaintiffs alleged in said sworn claim that no person or persons whatsoever had any interest in or lien upon the proceeds of the claim; that the claim was not filed in collusion with any enemy, ally of enemy, or any other person or persons for the purpose of avoiding the terms and provisions of the Trading with the Enemy Act; and that there were no set-offs, counterclaims or defenses; whereas, in fact, the said shipments out of which the said debt arose, and for the recovery

of which the said claim and this suit upon the claim were filed, were made on behalf of the firm of Crossman & Sielcken with the firm of Theodor Wille of Hamburg, Germany, under an agreement whereby the merchandise so to be purchased and shipped should belong in equal undivided shares to the said two firms of Crossman & Sielcken and Theodor Wille, respectively, and that the purchase, shipment and sale thereof should be for their joint account as a joint adventure; that said firm of Wille was at all times an enemy within the meaning of
155 the Trading with the Enemy Act; that, in fact, the said plaintiffs and the said Executor were fully aware of the joint enemy ownership in the shipments, the said Sorenson and Nielsen and the said Executor having theretofore filed a joint Petition, under oath, before the Mixed Claims Commission, United States and Germany, wherein the recovery sought was expressly limited to one-half of the total value of the cargoes.

5. That in a decision rendered by the Court of Arbitration at Hamburg, Germany, on January 20, 1918, in pursuance of a suit brought by the said Z. E. G. against the German executors of the will of the said Sielcken,
156 it was determined by interlocutory decree that the Z. E. G. had not assumed the risk of loss and was not liable on certain of the said shipments; that on August 3, 1918, the said German executors of the Estate of Sielcken entered into an indemnity agreement with the said Z. E. G., whereby the executors promised to save the Z. E. G. harmless against any possible claim which might later be made by the firm of Crossman & Sielcken against the Z. E. G. on account of those shipments for which the Z. E. G. was held not to be obliged to reimburse Crossman & Sielcken; that the said plaintiffs through their attorneys, engaged in numerous conferences with officials of the German Foreign Office and other German authorities in Berlin, after the filing of this suit in this Court; that partly in consideration of the said indemnity agreement and partly in consideration of a consent award being agreed to by the German Government to the extent of one-half the amount sought

in certain claims filed by the estate of Sielcken before the Mixed Claims Commission, United States and Germany, the Z. E. G. failed to answer the complaint filed herein and by default sought to secure the release to said plaintiffs of the moneys held in trust by the Alien Property Custodian and by the Treasurer of the United States; that upon ascertaining that a decree so entered would be objected to by the Alien Property Custodian and the Treasurer, the said Z. E. G. thereafter entered its appearance and filed its answer to the bill of complaint herein; that as a result of said conferences and after the trial of this case, the said plaintiffs recognized 158 the validity and effect of the aforesaid indemnity agreement and recognized the claim of the said Z. E. G. against the Executor of said Sielcken arising out of said agreement; that after the entry of the decree and in accordance with the aforesaid conferences and the tentative agreements made in Berlin in March of 1928, involving the Mixed Claims Commission award, said plaintiffs, through their attorneys, transmitted one-half of the amount recovered under the decree to the attorneys for the defendant Z. E. G.; that said distribution, as well as a payment to the enemy firm of Theodor Wille Company of Hamburg in settlement of its joint ownership claim 159 on these cargoes were both made out of moneys recovered in violation of the provisions of the Trading with the Enemy Act, as amended.

That the source of his information are letters, papers, documents, and exhibits in the possession of the United States Department of Justice, concerning the issues of this motion to vacate the decree entered in the instant suit.

Wherefore, deponent prays that the final decree entered in this cause be vacated and set aside, and for such other relief as this Court may deem just and proper.

FRANK C. STERCK.

Sworn to before me this
18th day of May 1938.
Armand Chankalian,
Notary Public,
New York Co.
Clerk's No. 301, Reg. No. 9C392.
Commission expires March 30, 1939.

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Index to Exhibits.

(Contained in Affidavit of Frank C. Sterck.)

Exhibit

A Partnership agreement of Hermann Sielcken, John S. Sorenson, and Thorleif S. B. Nielsen, dated June 2, 1913.

B Last Will and Testament of Hermann Sielcken in accordance with the law of New York, dated March 23, 1914.

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C Affidavit of Carl Heynen dated April 25, 1925.

D Publication of a declaration of the Reichsminister of Finance dated October 31, 1926, whereby the Zentral-Einkaufs-Gesellschaft m. b. H. ceased to exist as a corporate entity and its assets passed over to the Imperial German Government.

D-1 Translation of Exhibit D.

D-2 Extract from the Commercial Register.

D-3 Translation of Exhibit D-2.

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E Letter from Hermann Sielcken to John S. Sorenson dated September 22, 1914.

F License No. ET-344 issued to Sorenson and Nielsen by the War Trade Board, dated November 16, 1917.

G Letter dated November 30, 1917, appointing the Columbia Trust Company to represent the Alien Property Custodian in the liquidation of the firm of Crossman & Sielcken.

H Letter dated November 30, 1917, from the Columbia Trust Company to the Alien Property Custodian accepting the appointment to act as Agent for the Alien Property Custodian in the liquidation of the firm of Crossman & Sielcken.

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Exhibit

I Letter dated December 12, 1917, to Alien Property Custodian from the Columbia Trust Company.

J Certificate of Clerk of the Surrogate's Court stating that the Columbia Trust Company was appointed Executor of Hermann Sielcken, deceased, on January 26, 1918, together with copy of Letters Testamentary.

K Copy of Claim 5914, filed with the Alien Property Custodian March 29, 1921, by the Columbia Trust Company, as Executor of the Estate of Hermann Sielcken, deceased. 164

L Claim dated December 29, 1922, filed with the Mixed Claims Commission by the Columbia Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Crossman & Sielcken, against Germany.

M Claim dated October 26, 1927, filed before the Mixed Claims Commission by the American Exchange Irving Trust Company, as successor to the Columbia Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Crossman & Sielcken, against Germany and the Zentral-Einkaufs-Gesellschaft. 165

N Answer of German Government, dated October 15, 1928, filed through its Agent, Karl von Lewinski, before the Mixed Claims Commission.

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Exhibit	
O	Claim No. 38530 filed with the Alien Property Custodian on October 29, 1927, by the American Exchange Irving Trust Company, Executor of the Last Will and Testament of Hermann Sielcken, deceased, and by Sorenson and Nielsen, as Liquidators of the firm of Crossman & Sielcken.
P	Letter dated October 27, 1927, to Alien Prop-
167	erty Custodian from Barnes, Avery & Whiting, enclosing Claim No. 38530.
Q	Claim No. 38566, dated November 12, 1927, filed with the Alien Property Custodian by John S. Sorenson and Thorleif S. B. Nielsen, as the surviving partners of the firm of Crossman & Sielcken.
R	Letter dated November 12, 1927, from R. S. Doyle of the firm of Hopkins, Starr, Hopkins & Hamel, Washington D. C., to the Alien Property Custodian, transmitting Claim No. 38566.
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S	Letter dated November 21, 1929, to W. H. Pettry, Claims Division, Alien Property Custodian's Office, from Hamel & Doyle, stating that Mr. Hamel and Mr. Doyle are associated with Messrs. Barnes, Avery & Whiting, in the prosecution of Claims 38566 and 38530.
T	Testimony of Brainard S. Avery taken in January of 1935 before Referee Seligsberg.
U	Copy of account of Theodor Wille on the books of Crossman & Sielcken, dated September 30, 1917, charging Theodor Wille one-half of the loss on the cargoes which were seized by the British Naval Authorities in April, 1915.

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Exhibit

V Letter dated March 24, 1930, from Arthur Garfield Hays, attorney for the Zentral-Einkaufs-Gesellschaft, to The Attorney-General, advising that the Zentral-Einkaufs-Gesellschaft would not take an appeal from the decree.

W Letter dated March 27, 1930, from Earl B. Barnes and Brainard Avery to Arthur Garfield Hays, setting forth the distribution of the proceeds of the award of the Mixed Claims Commission and of the amounts received in satisfaction of the decree entered by this Court in the instant suit in the Southern District of New York. 170

X Copy of letter dated April 17, 1930, from O. R. Judd, Vice President of the Irving Trust Company, to Leonard B. Smith, attorney for the Irving Trust Company.

Y Letter dated April 24, 1930, from Brainard Avery to Messrs. Crossman & Sielcken in Liquidation, Mr. John S. Sorenson and Mr. Thorleif S. B. Nielsen, Liquidators. 171

Z Judgment entered in the New York Supreme Court for the County of New York on the 11th day of November, 1933, upon the report of Referee Henry F. Wolff, in an action brought by the Chase National Bank of the City of New York, as Ancillary Executor of the Last Will and Testament of Thorleif S. B. Nielsen, deceased, against John S. Sorenson, Irving Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, Clara Sielcken Schwarz, and others.

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Exhibit	
AA	Final Judgment dated November 8, 1937, upon the judgment entered in the New York Supreme Court for the County of New York on November 11, 1933, in the action brought by the Chase National Bank of the City of New York, as ancillary Executor of the Last Will and Testament of Thorleif S. B. Nielsen, deceased, against John S. Sorenson, Irving Trust Company, as Executor of
178	the Last Will and Testament of Hermann Sielcken, deceased, Clara Sielcken Schwarz and others.
BB	Release of Thorleif S. B. Nielsen to the firm of Crossman & Sielcken.
CC	Release of John S. Sorenson to the firm of Crossman & Sielcken.
DD	Opinion of Surrogate Foley, handed down April 21, 1938, on application of the Attorney-General to intervene in the Judicial Proceedings of the Estate of Hermann Sielcken, deceased.
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Exhibit A Annexed to Affidavit of Frank C. Sterck. 175

Partnership agreement of Hermann Sielcken, John S. Sorenson, and Thorleif S. B. Nielson, dated June 2, 1913.

COPY

THIS AGREEMENT, made the second day of June in the year One thousand nine hundred and thirteen, By and Between Hermann Sielcken, party of the first part, John S. Sorenson, party of the second part, and Thorleif S. B. Nielsen, party of the third part, 176

WHEREAS the said Hermann Sielcken is the sole surviving member of the firm of Crossman & Sielcken, which has for many years past been engaged in business in the City of New York, and the parties hereto of the second and third parts have been in the employment of the said firm for some thirty years past and the party of the first part has now admitted them as partners to continue the business of the said firm of Crossman & Sielcken, upon the terms as hereinafter expressed;

NOW, THEREFORE, THIS AGREEMENT WITNESSETH, that 177 the parties hereto, in consideration of their mutual trust and confidence in each other and of the sum of One Dollar ($1.00) by each of them to the others duly paid, receipt whereof is acknowledged by each, do hereby agree to form a co-partnership upon trial and subject as to its continuance or otherwise to the will of the party of the first part who is now the sole owner of the business.

ARTICLES OF CO-PARTNERSHIP

FIRST: The firm name of the partnership shall be "Crossman & Sielcken,"

SECOND: The business of the partnership shall be that of dealers in general merchandise, as the same has heretofore been carried on by the firm of Crossman & Sielcken.

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THIRD: The partnership shall continue until terminated by the death of one of the partners, or it may be ended at any time by notice in writing, given by the party of the first part to the parties of the second and third parts, terminating the partnership thirty (30) days after the date on which such notice is given.

FOURTH: The place of business of the partnership shall be at Number Ninety (90) Wall Street in the City and County of New York, or at such other place or places as the partners may hereafter determine.

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FIFTH: The capital of the partnership shall consist of all the property and assets of every kind and description belonging to the said Hermann Sielcken, as surviving partner of the late firm of Crossman & Sielcken, or such part thereof as may be used in the business of the partnership now formed, including the goodwill of said firm. The whole of the said capital shall continue to be the property of the said party of the first part, and, upon the termination of the partnership from whatever cause, the same shall belong, entirely and absolutely, to the party of the first part or to his estate. The parties of the second and third parts shall have no share or title in or to any of the said capital, their only interest in the business consisting of their shares of the net profits that may be realized therefrom.

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SIXTH: The net profits resulting from the business of the firm shall be divided as follows: The parties hereto of the second and third parts shall each be entitled to and shall receive the sum of One thousand Dollars ($1,000) for each month from June 1, 1913, to October 1, 1913, as his full share of said profits down to the said 1st day of October, 1913. From and after the 1st day of October, 1913, the said parties of the second and third parts shall each be entitled to and shall receive twelve and one-half per cent (12 1/2%) of the net profits of the business, as his share of said profits. The amount of the net profits shall be arrived at by

deducting from the gross income of the business all the expenses of carrying on the business, all losses incurred, and interest at the rate of six per cent (6%) per annum on the amount or value of the said capital of the firm which interest shall be paid to the said party of the first part.

After the first day of October, 1913, the parties of the second and third parts shall each be entitled to draw out of the moneys of the firm, for living expenses, the sum of One thousand Dollars ($1,000) a month, as a part, and on account, of his share of the net profits, 182
unless it should appear that such draft would exceed his share in the net profits which had been received by the firm at the date of such withdrawal.

The other seventy-five per-cent (75%) of the net profits, as well as all the net profits of the business prior to October 1, 1913, above the amounts drawn by the parties of the second and third parts as above provided, shall belong to the party hereto of the first part.

The party of the first part agrees to bear and pay any and all losses that may be incurred in the course of the business; such losses will of course reduce the 183
amount of the net profits, and so diminish the shares of the parties of the second and third parts in said profits, but the party of the first part will protect and save harmless the parties of the second and third parts from all individual liability to pay such losses or any of them.

SEVENTH: Each of the partners shall devote his time and best personal efforts and energy to the promotion of the interests of the partnership.

EIGHTH: Neither of the partners shall become liable as surety or bondsmen for any other person or persons, or incur any liability as endorser or otherwise for the accommodation of any other person or persons, without the written consent of his co-partners.

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NINTH: Books of account shall be kept containing proper entries of all the business and transactions of the partnership and such books of account, together with all bonds, notes, bills, securities, letters and other writings and papers, relating to the business of and belonging to the partnership, shall be open at all times to the examination and inspection of all the partners.

TENTH: On or about the first day of October in each year, there shall be made, and signed by the partners, a full inventory, account and balance sheet in
185 writing showing all the property and assets constituting the capital of the partnership as defined in above Article Fifth, and also showing the debts and liabilities of the partnership, and stating the net value thereof; all the entries therein shall be made as of the first day of October.

Every such annual inventory, account and balance sheet, made after the first one dated October 1, 1913, shall also show the amount of the net profits of the year preceding, the amount drawn on account thereof by each partner and the balance thereof standing to the credit of each partner. Each partner shall then be
186 entitled to withdraw such balance of profits standing to his credit.

ELEVENTH: Upon the death of the party of the first part, it shall be the duty of the surviving partners to transfer and pay over to the executor of the will of the deceased partner his capital as above defined and also all the property and business of the firm.

TWELFTH: Upon the death of either of said parties of the second and third parts during the continuance of the partnership, or in case the partnership shall be terminated by notice as provided in Article Third, the business of the partnership may be closed out and liquidated by the party of the first part or, at his option, he may continue the business, in either case as the sole owner thereof. Immediately upon such termination of the partnership, a balance sheet shall be made, showing

the profits of the business from the time of the last preceding balance sheet down to the date of such termination of the partnership, and the party of the first part shall pay over to the other surviving partner and to the estate of the deceased partner, their respective shares of the net profits realized from the business down to the date of such termination of the partnership.

THIRTEENTH: The amount of the profits realized from the business shall be conclusively fixed and determined by the balance sheets to be made as provided in these Articles and each of the parties hereto of the 188
second and third parts hereby covenants and agrees, for himself, his executors, administrators and assigns, that he and they will abide and be bound by the said balance sheets as settling beyond controversy their respective rights and interest in the profits and business of the firm; and that neither of them, nor the executors, administrators or assigns of either of them, will, at any time, bring any action or proceeding, at law or in equity, against the party of the first part, his executors, administrators or assigns, for an accounting as to the business of the firm or setting up any claim to any share, right or interest, in the business or the profits thereof, 189
other than or different from that fixed and established by the said balance sheets.

IN WITNESS WHEREOF, the parties to this agreement have hereunto set their hands and seals the day and year first above written.

(Signed) HERMANN SIELCKEN (Seal)
JOHN S. SORENSON (Seal)
THORLEIF S. B. NIELSEN (Seal)

Sealed and Delivered
In the presence of
JOHN B. MELUA.

190 **Exhibit B Annexed to Affidavit of Frank C. Sterck.**

Last Will and Testament of Hermann Sielcken in accordance with the law of New York, dated March 23, 1914.

I, HERMANN SIELCKEN, of Baden-Baden, Germany, do hereby make, publish and declare, the following to be my Last Will and Testament:

FIRST: I appoint Gustav Diederichsen and his brother Heinrich Diederichsen of Kiel, Germany, and my brothers-in-law, Carl Isenberg and Richard Isenberg residing
191 in Germany, the Executors of this my Will.

I also appoint the COLUMBIA KNICKERBOCKER TRUST COMPANY OF THE CITY OF NEW YORK, Executor of this Will, for the purpose of collecting and converting into cash all my property stiuated in the United States of America, and I direct said Company to my said Executors in Germany for administration and distribution by them. It is my wish that all my estate should be administered and distributed in Germany, under the laws and in the tribunals of Germany my domicile.

It is my desire that the said Trust Company should
192 engage as their attorney and legal counsel in the administration of the estate, EUGENE SMITH of the City of New York, who has been conversant with my personal affairs and those of my firm for the past thirty years.

SECOND: Whereas, since the death of my late partner George W. Crossman, in the firm name of Crossman & Sielcken, I have become the sole owner of the property and business of that firm and I have admitted into partnership JOHN S. SORENSON and THORLIEF S. B. NIELSEN to continue the business of the said late firm under the same firm name; and the Articles of Co-partnership made between us, bearing date the second day of June, 1913, provide that in case of my death the said partnership shall come to an end and that it

shall then be the duty of the surviving partners to transfer and pay over to the executor of my Will all the capital, property and business of the said firm,

It is my desire that my executor, the Columbia Knickerbocker Trust Company, should leave the management of the firm business for liquidation in the hands of the said Sorenson and Nielsen, to the largest possible degree, under the direct supervision of the said Trust Company. In such case, the said Sorenson and Nielsen shall each receive, as compensation for their services in such liquidation, the sum of One thousand dollars ($1,000) a month, 194
after my death, from the commencement of the liquidation to its end. In addition to this compensation, I give and bequeath to the said John S. Sorenson and Thorlief S. B. Nielsen each the sum of Fifty thousand dollars ($50,000) such legacies to be paid upon the final accounting of the said Trust Company as executor hereof.

THIRD: I have made a promise to Heinrich Seidel, Lina Kraft and my chief gardener Brinkmann, who have long been in my employment on my estate in Baden-Baden, that I will pay the sum of Five thousand Marks to each of them who remains in my employment on the 1st day of April, 1917, and I direct my executors to pay 195
the said sum of Five thousand Marks to each of them who shall remain in my employment at the time of my death in case I should die before the 1st day of April, 1917.

FOURTH: I give to the City of Baden-Baden, Germany, the amount of Sixty thousand Dollars ($60,000) to be invested in German Government securities, and the income to be applied in perpetuity to maintaining and keeping up the Park containing the Josephinen Fountain and the Park to be called the "Sielcken Anlagen." In case the City declines to call the Park "Sielcken Anlagen," this bequest shall become null and void and the said Sixty thousand Dollars ($60,000) shall fall back into the residuary estate.

FIFTH: I give to the hospital in Baden-Baden, built

by me and called Josephinen Heim the sum of Sixty thousand ($60,000) Dollars of which the income only shall be used for the purpose of maintaining and keeping up the institution.

SIXTH: I give all the rest, and residue of all my property and estate, real and personal, whatsoever and wheresoever situated, to my wife Clara Sielcken, absolutely.

SEVENTH: In case my wife should die before me or in case we should both lose our lives together in some
197 common accident or disaster, then, and in either such case only, I give and dispose of my said residuary estate as specified and directed in the following Articles of this Will, none of which shall be of any force or effect if my said wife survives me.

My wife and I have made, contemporaneously herewith, mutual Wills, each giving all of his or her property to the other, and the following Articles of this Will relate to and include any and all property I may thus derive from my wife.

EIGHTH: I give and devise all my said residuary estate to my said Executors in Germany, as Trustees, in
198 Trust and for the uses and purposes following, namely; to invest and keep invested, to receive the income arising therefrom and to apply the net income as follows; for the education and maintenance and to the use of my stepchildren, Alexander Wendroth and Ingeborg Wendroth, applying the following annual amounts to each of them, to wit: the sum of Fifteen thousand Marks every year, beginning from the date of my death, until they respectively arrive at the age of twenty-one years; the sum of Thirty thousand Marks for every subsequent year until they respectively arrive at the age of twenty-five years; the sum of Fifty thousand Marks for every subsequent year until they respectively arrive at the age of twenty-eight years, and the sum of Seventy-five thousand Marks for each of the two following years, until they respectively arrive at the age of thirty years. All the rest of the said income shall be applied by my

said Trustees in keeping up and maintaining in good repair and condition my estate, called "Mariahalden," situated at Baden-Baden, Germany, in paying taxes, insurance and other charges, relating to said estate, in enlarging the estate by the purchase of adjacent property, if desirable in the judgment of my said Trustees, in erecting new buildings, if deemed advisable in the judgment of my said Trustees, in purchasing works of art of every description, including paintings and sculpture, to add to those now on the premises, and especially in keeping up the garden in the best possible condition, 200
which includes the purchase and culture of rare flowers and plants; also in keeping up and maintaining in good repair and condition the estate now belonging to my wife, and known as "Muessen," near Segeberg, Holstein, Germany, and in paying all taxes, insurance and other charges and mortgages, if any, affecting the same.

NINTH: Upon my said stepson Alexander reaching the age of thirty years, it shall be the duty of my said Trustees to divide, convey and transfer, and I hereby give and devise, to him, in absolute ownership, one half part of all the said residuary trust estate; and thereupon the said trust shall cease as to such half part, but 201
shall continue as to the remaining half part for the benefit of my step-daughter Ingeborg until she reaches the age of thirty years. And upon the said Ingeborg reaching the age of thirty years, it shall be the duty of my Trustees to convey and transfer, and I hereby give and devise, to her, in absolute ownership, all the remaining part of the said trust estate and thereupon said trust shall come to an end.

In making the division of the said trust property herein directed, it is my will that the said estate called "Mariahalden," with all the furniture, silver, ornaments, works of art, and other like personal property, contained in the buildings on said estate, and also all the live stock, equipment and all other articles appurtenant to and used upon said premises, shall be included in the share of my stepdaughter, and the said estate called

202 *Exhibit B Annexed to Affidavit of Frank C. Sterck*

"Muessen" with all the property situated upon and pertaining to said estate, shall be included in the share of my stepson. My said Trustees shall appraise the two estates, and apply other property belonging to the trust in order to equalize the two shares in value. Until such division takes place, my said stepchildren shall have the right to occupy the said "Mariahalden" free from charges of any kind.

TENTH: If my stepson Alexander should die before
203 reaching the age of thirty years, leaving issue surviving him, I give and devise to such issue one-half part of the trust estate, which my Trustees shall then set apart, and convey and transfer to said issue.

But if the said Alexander should die before reaching the age of thirty years, leaving no issue, but leaving his sister, the said Ingeborg, surviving him, then my Trustees shall continue to hold the whole of the trust estate until she shall reach the age of thirty years, or until her death, in case she should die before attaining that age, applying the income to the use of the said Ingeborg with the same annual payments to her as directed in Article Eighth of this Will, and applying all the rest
204 of the income for the benefit and improvement of the estates "Mariahalden" and "Muessen," as specified in said Article Eighth. And upon the said Ingeborg reaching the age of thirty years, or upon her death before that age, my Trustees shall convey, transfer and deliver, and I hereby give and devise, the whole of the said trust estate to her, if living or, if dead, to her issue, or, in default of any such issue, surviving her, to the persons specified in Article Twelfth of this Will.

If the said Alexander should die before reaching the age of thirty years, leaving no issue, and his sister Ingeborg should have died before him, I give and devise, and my Trustees shall convey and deliver, the whole of the trust estate to the issue then living of the said Ingeborg, or, if there is no such issue then living, to the persons specified in said Article Twelfth.

ELEVENTH: If my stepdaughter Ingeborg should die before reaching the age of thirty years, leaving issue surviving her, I give and devise to such issue, one half part of the trust estate, which my Trustees shall then set apart and convey and transfer to said issue.

But if the said Ingeborg should die before reaching the age of thirty years, leaving no issue, but leaving her brother, the said Alexander, surviving her, then my Trustees shall continue to hold the whole of the trust estate, until the said Alexander shall reach the age of thirty years, or until his death, in case he should die 206
before attaining that age, applying the income to the use of the said Alexander with the same annual payments to him as directed in Article Eighth of this Will, and applying all the rest of the income, for the benefit and improvement of the estates "Mariahalden" and "Muessen," as specified in said Article Eighth, and upon the said Alexander reaching the age of thirty years, or upon his death before that age, my Trustees shall convey, transfer and deliver, and I hereby give and devise, the whole of the said trust estate to him, if living, or, if dead, to his issue, or, in default of any such issue, surviving him, to the persons specified in Article Twelfth 207
of this Will.

If the said Ingeborg should die before reaching the age of thirty years leaving no issue, and her brother Alexander should have died before her, I give and devise and my Trustees shall convey and deliver, the whole of the trust estate to the issue then living of the said Alexander, or, if there is no such issue then living, to the persons specified in said Article Twelfth.

TWELFTH: In the event of both my stepchildren dying before reaching the age of thirty years, leaving no issue surviving either of them, I then give all the said trust estate to my wife's brothers and sisters, namely: Carl Isenberg, Richard Isenberg, Frau Julie Barckhausen and Frau Paula Volkmann, and her nephews Alexander and Rudolph, sons of her deceased brother, Alexander Isenberg, the said brothers and sisters each taking an equal

208 *Exhibit B Annexed to Affidavit of Frank C. Sterck*

fifth part thereof, and the said nephews taking in equal shares the remaining fifth part.

LASTLY, I hereby revoke any and all Wills made by me at any time before this my Last Will and Testament.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-third day of March, in the year One thousand nine hundred and fourteen.

(Sd) HERMANN SIELCKEN.
(L. S.)

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Signed, Sealed, Published and Declared by the said Testator, HERMANN SIELCKEN, to be his Last Will and Testament, in the presence of us and each of us, who, at his request, in his presence, and in the presence of each other have hereunto subscribed our names as witnesses this 23rd day of March, 1914.

210 JAMES WALLIS SMITH, East Orange, N. J.

GEORGE UNDERWOOD KIRKPATRICK, 47 E. 58th Street, N. Y. City.

TERIJON WEITLING, 195 Fingerboard Road, Fort Wadsworth, S. I., N. Y.

Exhibit C Annexed to Affidavit of Frank C. Sterck. 211

Affidavit of Carl Heynen, Dated April 25, 1925.

United States of America
State of New York
County of New York ss:

CARL HEYNEN, being duly sworn, deposes and says:

That during the years 1915 and 1916 he was a duly accredited attache of the German Embassy in the City of Washington, representing the Imperial German Government; that he is familiar with the organization and purposes of the Zentral Einkaufs Gesellschaft, a German corporation; that said corporation was organized under governmental direction; that it was a governmental agency and the representative of said corporation in this Country was H. F. Albert, who was also attached to the German Embassy; that all of the business of said corporation in this Country was conducted through his office, which was designated as the Commercial Office of the German Embassy; that he knows that the operations of said corporation in the United States were exclusively for the purpose of purchasing goods, principally food stuffs and raw materials; that he acted from time to time as an assistant to the said Albert and thus a representative of the Zentral Einkaufs Gesellschaft; that he knows that the original capital of the said corporation was principally subscribed for by the Imperial German Government and German States and the free cities of Hamburg, Bremen and Lubeck; that said corporation was financed by the Imperial German Government and funds furnished it with which to buy supplies and raw materials; that he is familiar with the conditions under which the notes of the Imperial German Government, known as Series 26, were sold in this Country, and also with the disposition made of the proceeds of the sale of said notes; that a large percentage of the proceeds of said notes were turned over by the German Embassy and placed to the credit

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214 *Exhibit C Annexed to Affidavit of Frank C. Sterck*

of the Zentral Einkaufs Gesellschaft, and used by it in the purchase of supplies and raw materials for the Imperial German Government; that the funds in the hands of the Zentral Einkaufs Gesellschaft which were seized by the Alien Property Custodian, were in fact a portion of the proceeds of the sale of said Imperial German Government notes;

That said corporation transacted no business other than for the benefit of the Imperial German Government or its people in the supply of goods as was here-
215 tofore stated, and that it was not conducted for profit; that it was intended to be, and was, exclusively, a German Governmental agency, and handled its business for the German Government and its people;

That since December 13, 1921, he has held and now holds a power of attorney to act for and represent the said corporation in the United States of America;

That the affairs of the Zentral Einkaufs Gesellschaft are now in liquidation and that said corporation is no longer actively engaged in business.

CARL HEYNEN

Sworn to and subscribed before me this
216 25th day of April, 1925.

My commission expires Mar. 30, 1927.

Bertha L. Rosenstein,
Notary Public.

Bertha L. Rosenstein, Notary Public.
Bronx Co. Clerk's No. 100, Reg. No. 2729-A.
N. Y. Co. Clerk's No. 267, Reg. No. 7242.
Kings Co. Clerk's No. 68, Reg. No. 7250.
Commission expires March 30, 1927.

Exhibit D Annexed to Affidavit of Frank C. Sterck. 217

Publication of a declaration of the Reichsminister of Finance dated October 31, 1926, whereby the Zentral-Einkaufs-Gesellschaft m. b. H. ceased to exist as a corporate entity and its assets passed over to the Imperial German Government.

Beglaubigte Abschrift.

BEKANNTMACHUNG.

Auf Grund des Gesetzes über die Abwicklung von 218
Kriegsgesellschaften und Kriegsorganisationen vom 15. Juli 1921—R. G. Bl. Nr. 78 vom 29. Juli 1921 Seite 942—erkläre ich hierdurch, dass mit dem heutigen Tage die folgende Gesellschaft mit ihren Aktiven und Passiven auf das Reich übergeht:

Zentral-Einkaufs-Gesellschaft mit beschränkter Haftung in Liquidation, Berlin NW.7, Am Weidendamm 1a.

Mit der Abwickelung der Geschäfte dieser Gesellschaft wird die Reichs-Kredit-Gesellschaft Aktiengesellschaft zu Berlin W.8, Behrenstrasse 21/22, beauftragt.

Berlin, den 31.Oktober 1926. 219

DerReichsminister der Finanzen.
Im Auftrage
gez. v. BRANDT.

Für richtige Abschrift:
ZYBELL,
Leiter der Kanzlei V.

(Seal)

220 **Exhibit D-1 Annexed to Affidavit of Frank C. Sterck.**

Translation of Exhibit D.

Translation.

Certified Copy.

PUBLICATION.

Upon the law concerning the winding up of war corporations and war organizations of July 15, 1921—German Law Record No. 78, of July 29, 1921, page 942—
221 I hereby declare that at the present day the following corporation passes over to the Reich, together with its assets and liabilities:

Zentral-Einkaufs-Gesellschaft mit beschraenkter Haftung in Liquidation, Berlin NW. 7. Am Weidendamm la.

The Reichs-Kredit-Gesellschaft Aktiengesellschaft of Berlin W. 8. Behrenstrasse 21/22, is charged with the winding up of the affairs of this corporation.

Berlin, October 31, 1926.

222 The Reichs Minister of Finance.
By Order (Signed) v. Brandt.

For the correctness of the copy
(Signed) ZYBELL,
Chief of the Chancery.

(Legal Seal.)

Exhibit D-2 Annexed to Affidavit of Frank C. Sterck.

Extract from the Commercial Register.

Amtsgericht in Berlin-Mitte, Abteilung 122.

BEGLAUBIGTE ABSCHRIFT

AUS DEM

HANDELSREGISTER

ABTEILUNG B, NR. 13553.

1. Nummer der Eintragung.	2. Firma und Sitz.	3. Gegenstand des Unternehmens.	4. Grund- oder Stamm-Kapital.	5. Vorstand; persönlich haftende Gesellschafter; Geschäftsführer; Liquidatoren.	6. Prokura
1.	Zentral-Einkaufs Gesellschaft mit beschränkter Haftung. Berlin.	Die Förderung des deutschen Wirtschaftslebens durch die Beschaffung und den Vertrieb von Waren jeder Art unter Berücksichtigung der durch Kriegslage geschaffenen besonderen Verhältnisse. Die Gesellschaft kann sich an anderen kaufmännischen oder gewerblichen Unternehmungen beteiligen und darf ihren Betrieb auf Handelsgeschäfte jeder Art ausdehnen. Die Gesellschaft verfolgt ausschliesslich gemeinnützige Zwecke.	45 Millionen Mark		
2.					
3.					
4.					
5.					

Exhibit D-2 Annexed to Affidavit of Frank C. Sterck

1.	2.	3.	4.	5.	6.
Nummer der Eintragung.	Firma und Sitz.	Gegenstand des Unternehmens.	Grund- oder Stamm-Kapital.	Vorstand; persönlich haftende Gesellschafter; Geschäftsführer; Liquidatoren.	Prokura
6.				Liquidatoren sind: Kaufleute Otto Meyer und Friedrich Undütsch sowie Rechtsanwalt Dr. Hugo Israel sämtlich in Berlin.	
7.					
8.					

Exhibit D-2 Annexed to Affidavit of Frank C. Sterck

7.	8.	9.	10.
Gesellschaftsvertrag oder Satzung Vertretungsbefugnis.	Auflösung; Konkurs; Fortsetzung; Richtigkeit; Erlöschen der Firma.	Geschäftsnummer; Tag der Eintragung; Unterschrift.	Bemerkungen.
Gesellschaft mit beschränkter Haftung. Der Gesellschaftsvertrag ist am 5. Januar 1915 abgeschlossen.		122. HRB. 13553/2. 11. Januar 1915. Fürstenberg.	
Durch Beschluss vom 13. Januar 1916 sind §§ 9, Abs. 8 und 11 des Gesellschaftsvertrages abgeändert.		122. HRB. 13553/25. 13. März 1916. Raethel.	
Durch Beschluss vom 31. Juli 1916 sind §§ 9, 13 und 16 des Gesellschaftsvertrages abgeändert.		122. HRB. 13553/36. 7. August 1916. Raethel.	
Durch Beschluss vom 5. Dezember 1916 sind §§ 15 und 16 des Gesellschaftsvertrages abgeändert.		122. HRB. 13553/57. 28. Dezember 1916. Fleig.	
Durch Beschluss vom 15. Mai 1917 sind §§ 9 und 14 des Gesellschaftsvertrages abgeändert.		122. HRB. 13553/60. 23. Mai 1917. Vitsch.	

Exhibit D-2, Annexed to Affidavit of Frank C. Sterck

7. Gesellschaftsvertrag oder Satzung Vertretungsbefugnis.	8. Auflösung; Konkurs; Fortsetzung; Richtigkeit; Erlöschen der Firma.	9. Geschäftsnummer; Tag der Eintragung; Unterschrift.	10. Bemerkungen.
eder Liquidator ist in Geeinschaft mit einem anderen ur Vertretung berechtigt.	Die Gesellschaft ist aufgelöst.	122. HRB. 13553/9. 12. Oktober 1920. Eue.	Nach aufhebung der Geheimhaltungspflicht aus dem Geheimregister B 13553 hier her übertragen, soweit die Eintragungen noch gültig sind. 122. HRB. 13553/99 10. April 1922. Schumacher.
Durch Beschluss vom 31.3.1921 ist der Gesellschaftsvertrag hinsichtlich des §5 (Organe der Gesellschaft) geändert. § 11 ist gestrichen.		122. HRB. 13553/93. 19. Dezember 1922. Schumacher.	
	Die Firma ist gemäss §§ 7 und 10 des Ges. vom 15. Juli 1921 RG. Bl. Seite 942 gelöscht.	122. HRB. 13553. 3. November 1926. Kern.	

Vorstehende Abschrift stimmt mit den Registereintragungen Wörtlich überein.

Berlin den 3. November 1926.

(Illegible.)
Justizobersekretar,
Amtsgerichts Berlin/Mitte, Abtl. 122.

(Seal)

Exhibit D-3, Annexed to Affidavit of Frank C. Sterck. 235

Translation of Exhibit D-2

District Court in Berlin-Mitte, Division 122

CERTIFIED COPY
from the
COMMERCIAL REGISTER
DIVISION B, NO. 13553

NUMBER OF THE FIRM 13553

1. NUMBER OF REGISTRATION	2. FIRM AND PLACE OF BUSINESS	3. PURPOSE OF THE BUSINESS	4. ORIGINAL CAPITAL OR ORIGINAL STOCK	5. BOARD OF DIRECTORS; PERSONALLY LIABLE PARTNERS; MANAGERS; LIQUIDATORS.	6. PROKURA (Procuration)
1	Zentral-Einkaufs-Gesellschaft mit beschrankter Haftung. (Central Purchasing Corporation with limited liability) Berlin.	The fostering of the German economy by the acquisition and distribution of merchandise of all kinds, having regard to the special conditions, created by the war situation. The corporation may engage in other commercial or industrial enterprises and is permitted to extend its operation to other commercial branches of all kinds. The corporation pursues exclusively public utility purposes/ serving the common welfare/.	45 million marks		
2					
3					
4					
5					

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237

238 *Exhibit D-3 Annexed to Affidavit of Frank C. Sterck*

NUMBER OF THE FIRM: 13553

7. CONTRACT OF INCORPORATION OR ARTICLES OF INCORPORATION; POWER OF ATTORNEY.	8. DISSOLUTION; BANKRUPTCY; CONTINUANCE; NULLITY; EXTINCTION OF THE FIRM.	9. BUSINESS NUMBER; DATE OF REGISTRATION; SIGNATURE.	10. COMMENTS
Company with limited liability. The contract of incorporation was entered into on January 5, 1915.		122 HRB 13553/2 January 11, 1915 Furstenberg	(Commercial Register)
239 §§ 9, Par 8 and 11 of the contract of incorporation have been amended by resolution of January 13, 1916.		122 HRB, 13553/25 March 13, 1916 Raethel.	
§§ 9, 13 and 16 of the contract of incorporation have been amended by resolution of July 31, 1916		122 HRB, 13553/36 August 7, 1916 Raethel	
§§ 15 and 16 of the contract of incorporation have been amended by resolution of December 5, 1916		122 HRB 13553/57 December 28, 1916 Fleig	
240 § 9 and 14 of the contract of incorporation have been amended by resolution of May 15, 1917.		122 HRB 13553/60 May 23, 1917 Vitsch	

NUMBER OF THE FIRM 13553

1. NUMBER OF REGISTRATION	2. FIRM AND PLACE OF BUSINESS	3. PURPOSE OF THE BUSINESS	4. ORIGINAL CAPITAL OR ORIGINAL STOCK	5. BOARD OF DIRECTORS; PERSONALLY LIABLE PARTNERS; MANAGERS; LIQUIDATORS.	6. PROKURA (Procuration)
6				Liquidators are: Merchants Otto Meyer and Friedrich Undutsch as well as Councillor-at-Law Dr. Hugo Israel, all in Berlin.	
7					
8					

Exhibit D-3 Annexed to Affidavit of Frank C. Sterck 241

NUMBER OF THE FIRM: 13553

7. CONTRACT OF INCORPORATION OR ARTICLES OF INCORPORATION; POWER OF ATTORNEY.	8. DISSOLUTION; BANKRUPTCY; CONTINUANCE; NULLITY; EXTINCTION OF THE FIRM.	9. BUSINESS NUMBER; DATE OF REGISTRATION; SIGNATURE.	10. COMMENTS
Each liquidator is jointly with another liquidator authorized for representation.	The company is dissolved.	122 HRB 13553/9 October 12, 1920 Eue	Transferred to this register from secret register B13553 after abolition of the duty of secrecy, as far as entries are still valid. 122 HRB. 13553/99 April 10, 1922 Schumacher 242
The contract of incorporation has been amended with respect to § 5 (organs of the company) by resolution of March 31, 1921. § 11 has been stricken out.		122 HRB 13553/98 December 19, 1922 Schumacher	
	The company is extinguished in accordance with § § 7 and 10 of the Law of July 15, 1921. RGB 1. P. 942.	122 HRB 13553 November 3, 1926 Kern.	243

The above copy is word for word identical with the entries in the Register

Berlin, November 3, 1926
(signature illegible)
Court Clerk, The Documentary official of the Office of the District Court, Berlin-Mitte, Div. 122.

(Seal: Prussian District Court *Berlin-Mitte.)

244 **Exhibit E Annexed to Affidavit of Frank C. Sterck.**

Letter from Hermann Sielcken to John S. Sorenson dated September 22, 1914:

HOTEL ATLANTIC

RESTAURANT PFORDTE

Hamburg Septr 22 1914

a. d. Alster 72-79,

245 Berlin:
Hotel Atlantic
Der Kaiserhof

My dear Mr Sorensen:

When you receive enclosed letter you will be astonished, however I had my eye on the war from beginning & wrote you there might be some profitable business develop in time. I found the right people, who are willing to have the connection, to sell the goods, and give us a fair profit.

Dont forget it is necessary for us to remain owners of
246 the cargo until the steamer arrives at destination, you have to swear as American citizens that we are the owners, and we are until the cargo is paid for & delivered I have some friends who receive a part of the profit & who are willing to take a risk on $125,000.—a week, who will guarantee us to sell on arrival & who will pay us a profit of a sufficient amount, & we have nothing to do with the loss, if any occurs. You know I will not work for small profits—a difficult business; Wille share the risk with us What our eventual buyers will make or loose, is immaterial to me, we have a sure profit payable cash against delivery for every cargo we dispatch. The amount is limited to about $125,000.— weekly of the articles I enclose. My prospective buyers are rich and a non payment is excluded.

On arrival of the steamer I go to Copenhagen to deliver the bills of lading against money only, & in future

Exhibit E Annexed to Affidavit of Frank C. Sterck 247

I will find out through Wille whether they will deliver & receive the money. I will buy a cable transfer to pay the amount of the cargo with profit to C & S in N. Y.

On the cargo, that is the merchandise you need not make a profit when the cargo is delivered in good order & condition. We will get sufficient profit to be satisfied.

We have to swear the cargo is our property & you have to swear to it as American citizens. Keep the whole matter quiet, no unnecessary alarm or undue secrecy, but let Mr. Kirkpatrick manage the purchases & Mr. Nielsen 248
the insurance. The war risk is less as American citizens, in a neutral vessel to a neutral port. Let us pay the closest attention, in buying good quality & ship in good condition. I cannot judge how money conditions are with you, the amount for the total will not exceed say $375,000.— before we get our money back for each individual cargo by cable transfer my friends here would pay or send us money but then we would not be the owners of the merchandise & could not swear to it that we are We must be until the vessel arrives.

If you are short of money borrow on anything we have, as we get the money back quickly. It is supposed that 249
everybody is willing to back the Export business, at least to assist it In any other shape we could not ship the cargos and get buyers on arrival. We are to be the owners and then I have the promise of first class merchants beyond all doubt, secured absolutely, that they will find buyers. Anyhow how much they make is nothing to us, if we get prompt pay and a handsome profit. I must not write too much. You will understand these are war times, where everybody is curious, and all act as spy's. I found this opportunity and it will last so long as the war and general troubles exist.

Hide the letters or destroy them after taking notes. Let nobody but Nielsen know what it is The Export department will find out when we count profits

On a separate sheet you get the list what to ship and how to send bills of lading etc

250 *Exhibit E Annexed to Affidavit of Frank C. Sterck*

The long letter I wrote, and let some friends see it, you will understand what the meaning is about some matters. Without that I could not obtain the confidence of the people, who will speculate on arrival of the merchandise. They have money and the connections

Later on I may give more details Look that you fill the cargoes well & let me know by the steamer which brings the merchandise, how you finance. We may have to pay a good price for the money, if a safe party, to be trusted. I am willing, the business will pay for it

251 With kind regards

Yours

H. SIELCKEN

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Exhibit F Annexed to Affidavit of Frank C. Sterck. 253

License No. ET-344 issued to Sorenson and Nielsen by the War Trade Board, dated November 16, 1917.

War Trade Board
Washington, D. C.

License No. ET-344
Dated, Nov. 16, 1917

UNITED STATES OF AMERICA

LICENSE TO ACT ON BEHALF OF ENEMY

(Issued Under Trading with the Enemy Act.) 254

License is hereby granted to JOHN S. SORENSON and THORLEIF S. B. NIELSEN, doing business as co-partners with Herman Sielcken, under the firm name of CROSSMAN & SIELCKEN, 90 Wall Street, New York, City, to continue to do such business on behalf of Herman Sielcken and in the course of same to trade with any person, firm or corporation, excepting an "enemy" or "ally of enemy" not holding a license under this act, or a person acting on behalf of or for the benefit of such "enemy" or "ally of enemy," as may be necessary for the sale, liquidation and disposition of the interest of 255 the said Herman Sielcken in the business, assets and property of the said firm of Crossman & Sielcken. The licensees may, however, collect any sums due from the "enemies" or "allies of enemies" and persons acting on behalf of or for the benefit of such "enemies" or "allies of enemies," a list of whom has been forwarded to the War Trade Board and the Alien Property Custodian.

It is a term and condition of this license that (1) said liquidation shall be carried out under the supervision of Arthur Young & Co. of New York, as Certified Public Accountants, and under such additional supervision and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expenses of such supervision shall be paid as part of the expenses incidental to said liquidation;

256 *Exhibit F Annexed to Affidavit of Frank C. Sterck*

(2) the licensees shall turn over to the Alien Property Custodian the share of the "enemy" partner in said firm of such proceeds of said liquidation either at the termination of said liquidation or from time to time during the course of said liquidation as the Alien Property Custodian shall desire;

(3) a report of the progress of said liquidation shall be made to the Alien Property Custodian and the War Trade Board at the end of each calendar month, or oftener if required; and

257

(4) this license is revocable and subject to amendment in the discretion of the War Trade Board.

This license is issued on the basis of the statements made in your application, and is subject to the rules and regulations which have been, or which may be hereafter issued by the War Trade Board and to any special conditions that may be set out herein.

WAR TRADE BOARD
VANCE C. MCCORMICK,
Chairman.

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BUREAU OF ENEMY TRADE
by G. H. DORR.

This license is not valid unless signed and impressed with the seal of the War Trade Board.
(Seal)

Exhibit G Annexed to Affidavit of Frank C. Sterck. 259

Letter dated November 30, 1917 appointing the Columbia Trust Company to represent the Alien Property Custodian in the liquidation of the firm of Crossman & Sielcken.

(Copy).

Washington, D. C., November 30, 1917.

Columbia Trust Co.,
60 Broadway, 260
New York City.

Gentlemen:

I hereby appoint you my Agent to represent me in the liquidation of Crossman & Sielcken.

I enclose copy of license which shows Messrs. Sorensen & Nielsen are to liquidate, subject to my supervision; also official notice to Messrs. Crossman & Sielcken of my appointment, which you should hand to them, retaining a copy for your files.

All of the expenses of supervising the liquidation are 261
proper charges against the trust, as you will see by the license. I shall be glad to talk over with you the amount of your compensation after you have had an opportunity to acquaint yourself with the details.

A representative of Arthur Young & Company is in the office, for the purpose of supervising expenses and making reports, which services you may want to continue. I will be glad to go over this matter after you have had a chance to familiarize yourself.

The license, as you will notice, calls for monthly reports. Please see that they are forwarded in duplicate form to me, as I want to retain one and send the other to Washington.

Questions of policy, also requests to approve authority to sell assets, compromise or adjust claims and accounts,

262 *Exhibit G Annexed to Affidavit of Frank C. Sterck*

at least for the immediate future, should be taken up with me or my Assistant, Mr. H. O. Kilbourn, for consideration, until you become familiar with my general thoughts on these subjects.

There should be prepared immediately a statement of the assets and liabilities as of close of business this date, so that there may be had a statement showing the assets that I may be charged with the supervision of, which will be a basis of the Alien Property Custodian to
263 account from to the enemy partners.

In order that the Custodian may be in a position to properly account for the assets and justify the liquidation, all of the books, papers and records of this Company must be retained and finally placed in storage, so that access may be had to them at the time of the accounting at the close of the war.

Will you please see that this is done.

Very Respectfully,

BJ.
Enc.

264

Manager, Dept. of General Business.

Exhibit H Annexed to Affidavit of Frank C. Sterck. 265

Letter dated November 30, 1917 from the Columbia Trust Company to the Alien Property Custodian accepting the appointment to act as Agent for the Alien Property Custodian in the liquidation of the firm of Crossman & Sielcken.

Willard V. King, President
Charles H. Keep, Chairman of the Board
Orrin R. Judd, Trust Officer
A. N. Hazeltine, Asst. Trust Officer
Willard C. Mason, Asst. Trust Officer
S. Stern, Manager Foreign Dept. 266
Frederick G. Herbst, Auditor

Howard Bayne, Vice President
Geo. E. Warren, Vice President
Harris A. Dunn, Vice President
Charles F. Minor, Vice President
J. Sperry Kane, Asst. Secretary
Fred'k V. Clowes, Asst. Secy.
Charles E. Wolff, Asst. Secy.
Henry M. Atkins, Asst. Secy.

Benj. L. Allen, Vice President
James Ely Miller, Vice President 267
Langley W. Wiggin, Vice Pres. & Secy.
Fred C. Marston, Treasurer
Robert I. Curran, Asst. Treas.
Walter G. Kimball, Asst. Treas.
Howard E. Rider, Asst. Treas.
Arthur W. Hutchins, Asst. Treas.

COLUMBIA TRUST COMPANY

SIXTY BROADWAY

New York

Uptown Office
5th Avenue & 34th Street
Harlem Branch
100 West 125th Street
Bronx Branch
3rd Avenue & 148th Street

268 *Exhibit H Annexed to Affidavit of Frank C. Sterck*

November 30, 1917

Joseph A. Bower, Esq.
Manager, Dept. of Business,
Alien Property Custodian
c/o Liberty National Bank,
120 Broadway, New York City.

My dear Sir:

269 We hereby acknowledge and accept the appointment to act as your Agent in the liquidation of the firm of Crossman & Sielcken as set forth in your favor of the 30th instant, and acknowledge receipt from you of two copies of the license granted by the War Trade Board to Messrs. John S. Sorensen and T. S. B. Nielsen; also official notice signed by the Managing Director of the Alien Property Custodian, addressed to Messrs. Crossman & Sielcken with reference to your appointment. The original notice and a copy of the license we are delivering to Crossman & Sielcken.

270 We note your instructions with regard to going over with you the questions of policy and other important matters, and also that we are to render monthly reports in duplicate. We have also taken steps to obtain a statement of the assets and liabilities of Crossman & Sielcken as of the close of business today, in accordance with your request.

Assuring you that we will give the matter our best attention, we are

Yours very truly,

G. E. WARREN
Vice President

gew.dw

Exhibit I Annexed to Affidavit of Frank C. Sterck. 271

Letter dated December 12, 1917 to Alien Property Custodian from the Columbia Trust Company.

COLUMBIA TRUST COMPANY

SIXTY BROADWAY

New York

December 12, 1917

J. A. Bower, Esq. Manager 272
Department of General Business,
Alien Property Custodian,
c/o Liberty National Bank,
120 Broadway, New York City.

Dear Mr. Bower:

As Agent for the purpose of liquidating the firm of CROSSMAN & SIELCKEN, and acting under your directions received from time to time, I beg to report as follows:

1) SECURITIES 273

Columbia Trust Company has taken possession of the stocks and bonds and other securities belonging to the firm of Crossman & Sielcken, which have been entered on our books under an account in the name of "A. Mitchell Palmer, Alien Enemy Custodian, Crossman & Sielcken Account." We are arranging for the transfer of certain of the stocks to the name of the Custodian. Other stocks which are in the name of the firm and will probably be disposed of within a short time, are not being transferred. The liquidation of these securities will proceed as rapidly as they can be disposed of advantageously.

274 *Exhibit I Annexed to Affidavit of Frank C. Sterck*

2) Cash Balances

The cash balances in various banks have all been consolidated in an account with Columbia Trust Company. All disbursements are made only on receipt of a voucher signed by a representative of Arthur Young & Company and by the Columbia Trust Company as liquidating agent.

3) Merchandise on Hand

275 The merchandise on hand is being gradually disposed of. No general liquidation will take place until we hear from Mr. Rothschild, who was designated to look into the matter of disposing of this property. We expect to hear from him within a day or two.

4) Accounts and Notes Receivable

These accounts are being collected as rapidly as possible and a large majority of them will work out in the next 60 or 90 days. There are a few cases that will have to be given special attention and will be taken up with
276 you later.

5) Custody of Books and Papers

We have taken possession of two safes, on which we have placed a combination known only to the officers of this company, in which the important records are stored every night. These books are delivered by our representative to the representative of Arthur Young & Company every morning.

6) Correspondence

One of our representatives has been going through the files of correspondence in regard to rubber shipments or any other matters that may be of special interest and is setting aside any letters which we believe may be of

interest to you. The correspondence in regard to the rubber shipments is kept in our possession.

7) British Prize Claims

We enclose herewith copies of correspondence from Sherman & Sterling and from English solicitors, with regard to the British seizures of merchandise belonging to Crossman & Sielcken. In view of the inquiry being made by the State Department, no further action will be taken by us until a report is received by them. 278

We enclose also copy of a letter from Messrs. Davies, Auerbach & Cornell, and one from Messrs. Gifford, Hobbs & Beard, bearing on the question of the rubber held as collateral for the advances on account of Weber & Schaer, and also on the question of the former partners' interest in these assets.

We would be obliged if you would confirm the foregoing action, if it is in accordance with your wishes.

Yours respectfully,

G. E. WARREN

gew.dw Vice President 279

280 **Exhibit J Annexed to Affidavit of Frank C. Sterck.**

Certificate of Clerk of the Surrogate's Court stating that the Columbia Trust Company was appointed Executor of Hermann Sielcken, deceased, on January 26, 1918, together with copy of Letters Testamentary.

No. A 138203

THE PEOPLE OF THE STATE OF NEW YORK,

To all to whom these presents shall come or may concern,

281

SEND GREETING:

KNOW YE, That we, having inspected the Records of our Surrogate's Court in and for the County of New York, do find that on the 26 day of January in the year one thousand nine hundred and eighteen by said Court, Letters Testamentary on the estate of Hermann Sielcken late of the County of New York, deceased, were granted unto Columbia Trust Company of the City of New York, N. Y. the Executor named in the last Will and Testament of said deceased, and that it does not appear by said Records that said Letters have been revoked.

282

In Testimony Whereof, we have caused the seal of the Surrogate's Court of the County of New York to be hereunto affixed.

Witness, Honorable John P. O'Brien a Surrogate of our said County of New York, the 11 day of October in the year of our Lord one thousand nine hundred and twenty-seven

MARTIN G. McCUE,
Clerk of the Surrogate's Court.

Exhibit J Annexed to Affidavit of Frank C. Sterck 283

LETTERS TESTAMENTARY

THE PEOPLE OF THE STATE OF NEW YORK, By the grace of God free and independent, To all to whom these presents shall come or whom they may concern, Send Greeting:

Know ye, that at the County of New York, on the 25 day of January in the year of our Lord one thousand nine hundred and eighteen before Honorable Robert Ludlow Fowler a Surrogate of our said county, the last will and testament of Hermann Sielcken, deceased, was 284
proved, and is now approved and allowed by us; and the said deceased having been at the time of his death a resident of Baden-Baden, Germany, leaving personal property within the County of New York, by means whereof the proving and registering said will and the granting administration of all and singular the goods, chattels and credits of the said testator and also the auditing, allowing and final discharging the account thereof doth belong unto us, the administration of all and singular goods, chattels and credits of the said deceased in any way concerning his will, is granted unto Columbia Trust Co. of the City of New York, N. Y., executor in the 285
said will named. The decree admitting said Will to probate enjoins said Executor from paying any legacy or money or transferring property in violation of the prohibition contained in the "Trading with the Enemy Act" approved Oct. 6, 1917.

IN TESTIMONY WHEREOF, we have caused the seal of office of the Surrogate's Court of the County of New York to be hereunto affixed.

WITNESS HONORABLE ROBERT LUDLOW FOWLER, a Surrogate of our said County of New York at said county, the 26 day of January, in the year of our Lord one thousand nine hundred and eighteen.

(Seal)

DANIEL J. DOWDNEY
Clerk of the Surrogate's Court.

286 *Exhibit J Annexed to Affidavit of Frank C. Sterck*

State of New York,
County of New York, ss:

I, Martin G. McCue, Clerk of the Surrogate's Court of said county, do hereby certify that I have compared the foregoing copy of Letters Testamentary granted unto the Columbia Trust Company of the City of New York, N. Y., upon the goods, chattels and credits of Hermann Sielcken deceased, with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom and of the whole of such
287 original record.

In TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Surrogate's Court of the County of New York, this 14 day of October in the year of our Lord one thousand nine hundred and twenty-seven.

MARTIN G. McCUE,
Clerk of the Surrogate's Court.

PR.

LETTERS TESTAMENTARY

288 Upon the Goods, Chattels and Credits of

HERMANN SIELCKEN

Deceased

Granted to

COLUMBIA TRUST CO. OF THE CITY OF NEW YORK, N. Y.

NOTICE.

Attention is called to the provisions of §231 and §104 of the Surrogate's Court Act, which make it a misdemeanor and a cause for removal for an Executor, Administrator, Trustee or Guardian to deposit or invest Estate funds in his individual account or name. All Estate funds must be deposited in the name of the Executor, Administrator, Trustee or Guardian in his or her representative capacity and to the credit of the estate.

Exhibit K Annexed to Affidavit of Frank ... ck. 289

Copy of Claim 5914, filed with the Alien Property Custodian March 29, 1921 by the Columbia Trust Company, as Executor of the Estate of Hermann Sielcken, deceased.

Claim 5914

State of New York
County of New York ss:

I, George E. Warren, a Vice President of the Columbia Trust Company, as executor of the Estate of Herman Sielcken, on March 29th executed for the Trust Company 290
above, a notice of claim and application for allowance filed under Section 9 of the Trading with the Enemy Act, seeking a release and return to the said Trust Company as executor, aforesaid, of One Hundred Thousand Dollars ($100,000) paid to the Alien Property Custodian by Crossman & Sielcken as part payment in the liquidation of the interest of Herman Sielcken in the firm of Crossman & Sielcken.

The Columbia Trust Company desires to amend the notice of claim and application for allowance so executed by me so that the notice of claim may include all the right, title and interest of the said Herman Sielcken 291
in the liquidation of the partnership of Crossman & Sielcken as such right, title and interest may have been acquired by the Alien Property Custodian by virtue of a demand, seizure, or voluntary turn over, and as now carried on the books of the Alien Property Custodian as the interest of Herman Sielcken in said partnership.

GEORGE E WARREN

State of New York
County of New York ss:

Sworn and subscribed to before me this 29th day of March, 1921.

W M MORGAN
Notary Public,
N. Y. County No. 163, Register's No. 1143
Cert. filed Bronx Co. No. 9, Reg. No. 2101
Term expires March 30, 1921.

292 *Exhibit K Annexed to Affidavit of Frank C. Sterck*

ALIEN PROPERTY CUSTODIAN.

APC form No. 111

Claim 5914 Trust 592

NOTICE OF CLAIM PURSUANT TO SECTION 9 OF "TRADING WITH THE ENEMY ACT."

Instructions.

293 Notice of claim, under oath, must be executed in duplicate by claimant and filed with the Alien Property Custodian, attention of Bureau of Law, Washington, D. C.

If claimant makes application to the Attorney General, in pursuance of sec. 9 of the "Trading with the enemy Act," and the Presidential Executive Orders thereunder, for the payment, conveyance, transfer, assignment, or delivery to said claimant of money or other property held by the Alien Property Custodian, he must append to his application to the Attorney General a sworn copy of this notice of claim.

Each individual claim must be presented on a sepa-
294 rate form.

Section 2 of the "Trading with the enemy Act" defines "enemy" and "ally of enemy" as follows:

"Sec. 2. That the word 'enemy,' as used herein, shall be deemed to mean, for the purposes of such trading and of this act—

"(*a*) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

"(*b*) The government of any nation with which the United States is at war or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

"(*c*) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by 296
proclamation, include within the term 'enemy.'

"The words 'ally of enemy,' as used herein, shall be deemed to mean—

"(*a*) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing busi- 297
ness within such territory.

"(*b*) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

"(*c*) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term 'ally of enemy.'"

298 *Exhibit K Annexed to Affidavit of Frank C. Sterck*

The Presidential Proclamation of February 5, 1918, in pursuance of section 2 (c) of the act, included within the meaning of the word "enemy," for the purpose of the "Trading with the enemy Act":

"All natives, citizens, or subjects of the German Empire or of the Austro-Hungarian Empire who, by virtue of the provisions of sections four thousand and sixty-seven, four thousand and sixty-eight, four thousand and sixty-nine, and four thousand and seventy, of the Revised Statutes, and of the proclamations and regulations there-
299 under, have been heretofore or may be hereafter transferred after arrest into the custody of the War Department for detention during the war."

Section 9 of the "Trading with the enemy Act" is as follows:

"Sec. 9. That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of
300 enemy, whose property, or any part thereof, shall have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require, and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the alien property custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any

suit at law or inequity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal 302
place of business (to which suit the alien property custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the alien property custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or 303
by the alien property custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated.

"Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the alien property custodian shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

The Executive Order of October 12, 1917, provides, among other things, as follows:

"XXXII. I vest in the Attorney General all power and authority conferred upon the President by the provision of section 9 of the 'Trading with the enemy Act.'"

304 *Exhibit K Annexed to Affidavit of Frank C. Sterck.*

To FRANCIS P. GARVAN,
ALIEN PROPERTY CUSTODIAN,
Washington, D. C.

The undersigned, hereinafter referred to as claimant, desiring to take advantage of section 9 of the "Trading with the enemy Act," hereby gives you notice of claim, as follows, and hereby agrees to furnish such other information and proof as you may require.

1. Name of claimant (individual, partnership, association, corporation): Columbia Trust Company as Executor of Will of Hermann Sielcken, dec.

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2. Address of claimant: No. 60 Broadway, New York City, New York.

3. Name of enemy or ally of enemy whose property is affected by this claim: Estate of Hermann Sielcken.

4. Residence or last known address of enemy or ally of enemy: New York, N. Y.

5. Name of any other persons, if known to claimant, who have any interest whatever in within claim: None.

306

6. Address or addresses of such person or persons: None.

7. If the claim, notice of which is hereby given, is made for certain specific property, or for an interest in property, the following questions must be answered:

(*a*). The said property was conveyed, transferred, assigned, or delivered to Alien Property Custodian by: Crossman & Sielcken

Address: (No.) 90 (Street) Wall Street (City) New York (Country) New York.

(*b*) The following is an accurate description of the property affected by this notice of claim (this description must be sufficiently complete to identify the property): $100,000.00 being a small part of this Estate, the balance being in the hands of the Executor (including any income therefrom). For proof of citizenship

8. The nature of the claim, notice of which is hereby given, is as follows: (If the claim is for only part of the property, describe that part, if of an interest, state precisely what the interest is; if of a debt, state fully the nature thereof, how it is evidenced, and whether there are any set-offs or counterclaims. Attach verified copies of all papers relied on to support claim):

This claim is by the executor of the Will of said Hermann Sielcken for the above mentioned fund paid to the Alien Property Custodian as the property of Hermann Sielcken who died October 8, 1917.

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The return of this property is asked in order that administration may be had thereon and proper distribution made under the terms of his Will. The enemy interest in this estate will be accounted for to the Alien Property Custodian.

The claimant represents and alleges that claimant is not an enemy or ally of enemy; that no person or persons whatsoever, except as above stated, have any interest in or lien upon the proceeds of the claim set forth in the within notice; that this notice is not filed in collusion with any enemy or ally of enemy, or any other person or persons for the purpose of avoiding the terms and provisions of the "Trading with the enemy Act"; that the claim herein referred to is in all respects bona fide, and that there are no set-offs, counterclaims, or defenses, except as herein stated.

309

Dated March 28th, 1921.

(Signature of party making claim.)
COLUMBIA TRUST COMPANY
by G. E. WARREN,
Vice President.

(Partnerships should sign by member or duly authorized representative. Corporations or associations should sign by officer or duly authorized representative, and should affix corporate or official seal.)

Attest:
(illegible)
Asst. Secy.

(Seal.)

310 *Exhibit K Annexed to Affidavit of Frank C. Sterck*

Affidavit of Individual Making Claim.

State of .....
County of ..... ss:

I swear (or affirm) that the foregoing statements are true and correct.

.....

Subscribed and sworn to before me this.....day of ....., 19....

311 .....
.....

Affidavit of Member or Representative of Partnership Making Claim.

State of .....
County of ..... ss:

I swear (or affirm) that I am..... of the partnership making foregoing claim, and that the fore-
312 going statements are true and correct.

.....

Subscribed and sworn to before me this.....day of ....., 19....

.....
.....

Exhibit K, Annexed to Affidavit of Frank C. Sterck 313

Affidavit of Officer or Representative of Corporation or Association Making Claim.

State of New York,
County of New York, ss:

I swear (or affirm) that I am a Vice President of the corporation/association making the foregoing claim, and that the foregoing statements are true and correct.

G. E. WARREN

Subscribed and sworn to before me this 29th day of 314
March, 1921.

M. B. LAFOUNACE
Notary Public, N. Y. County No. 430
Register's No. 2395
Cert. Filed in Bronx Co. No. 48, Reg. No. 2204-A
Term expires March 30th, 1922

(Seal)

Claim No. 5914 Trust No. 592

ALIEN PROPERTY CUSTODIAN

315

NOTICE OF CLAIM UNDER SECTION 9 OF THE "TRADING WITH THE ENEMY ACT."

COLUMBIA TRUST CO., Executor,
Claimant,

vs.

EST. HERMANN SIELCKEN,
Enemy.

Received and entered in the Bureau of Law Register of Claims Book 1, page 395.

Mar., 1921.

E. E. WHITAKER,
Bureau of Law.

316 *Exhibit K Annexed to Affidavit of Frank C. Sterck*

Copy of claim received from Bureau of Law.

....., 19.....

.....

Bureau of Trusts.

Notice received from Attorney General of application for order.

....., 19.....

317 .....

Bureau of Law.

Order made by Attorney General and copy received.

....., 19.....

.....

Bureau of Law.

Copy of Attorney General's order received from Bureau of Law.

....., 19.....

318 .....

Bureau of Trusts.

Service of summons in suit received.

....., 19.....

.....

Bureau of Law.

Notification of service of summons in suit received from Bureau of Law.

....., 19.....

.....

Bureau of Trusts.

Report Nos.:

Exhibit L Annexed to Affidavit of Frank C. Sterck. 319

Claim dated December 29, 1922, filed with the Mixed Claims Commission by the Columbia Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Crossman & Sielcken, against Germany.

BEFORE THE MIXED CLAIMS COMMISSION
UNITED STATES AND GERMANY

Claim of 320	
COLUMBIA TRUST COMPANY, as Executor of the last Will and Testament of Hermann Sielcken, deceased, and JOHN S. SORENSON and THORLEIF S. B. NIELSEN, surviving partners of the firm of Crossman & Sielcken, against GERMANY.	December 29, 1922 Claim No. 2.

PETITION. 321

To the Honorable, The Secretary of State.

I. Your petitioners respectfully represent that the said Columbia Trust Company is and was at all the times hereinafter mentioned a domestic corporation, organized and existing under the laws of the State of New York, having its principal office at No. 60 Broadway, New York City, and that its stock is owned in whole or in part by citizens of the United States. That said John S. Sorenson and Thorleif S. B. Nielsen respectively are and were at all the times hereinafter mentioned duly naturalized citizens of the United States.

II. That said Columbia Trust Company is the executor named as "Columbia-Knickerbocker Trust Company" in the last Will and Testament of Hermann

322 *Exhibit L Annexed to Affidavit of Frank C. Sterck*

Sielcken, deceased, with respect to all property left by the said Sielcken in the United States of America, and particularly with respect to the liquidation of the firm of Crossman & Sielcken, hereinafter mentioned. That said Hermann Sielcken was at all the times hereinafter mentioned up to October 8th, 1917, a citizen of the United States, having been duly naturalized under the name of August Hermann Sielcken; and that he died on or about the 8th day of October, 1917.

III. That said last Will and Testament of Hermann
323 Sielcken was duly admitted to probate by the Surrogate's Court of New York County, in the State of New York, on or about the 25th day of January, 1918; that Letters Testamentary thereon were duly issued out of said Court to said Columbia Trust Company on the 26th day of January, 1918; and that said Columbia Trust Company thereupon duly qualified and entered upon the discharge of its duties as, and now is, such executor.

IV. That at all the times hereinafter mentioned up to October 8th, 1917, said Hermann Sielcken, John S. Sorenson and Thorleif S. B. Nielsen were engaged in busi-
324 ness as exporters, importers and commission merchants, as co-partners under the firm name and style of Crossman & Sielcken, having their principal place of business in the Borough of Manhattan, City, County and State of New York. That by their agreement of co-partnership, which bore date the 2nd day of June, 1913, it was provided, among other things, that the whole of the capital of said partnership was, and should continue to be, the property of said Sielcken, and that upon the termination of the partnership from whatever cause, the same should belong, entirely and absolutely, to said Sielcken or to his estate; and that said Sorenson and Nielsen respectively should have no share or title in or to any of the said capital, their only interest in the business consisting of their shares of the net profits that might be realized therefrom. And that in and by said agree-

ment of co-partnership it was further provided that upon the death of said Sielcken it should be the duty of the surviving partners to transfer and pay over to the executor of the will of the deceased partner his said capital and also all the property and business of the firm.

V. That pursuant to the provisions of said agreement of co-partnership, upon the death of said Sielcken as aforesaid, said surviving partners Sorenson and Nielsen did transfer and pay over to said Columbia Trust Company, as executor as aforesaid, the said capital and also 326
all the property and business of said firm; and that said Columbia Trust Company, as such executor, has ever since been and now is, engaged in liquidating the business of said partnership as if it had been carried on by said decedent in his sole name; and by reason of the foregoing, said Columbia Trust Company, as executor as aforesaid is entitled to collect and receive all the assets and credits of said firm of Crossman & Sielcken, and to prosecute and recover upon any and all causes of action and claims of whatever nature existing in favor of said firm at the time of its dissolution as aforesaid.

VI. That on or about the 27th day of February, 1915, 327
the said firm of Crossman & Sielcken shipped upon the Norwegian steamer Hilding, belonging to Seeberg Steamship Line, Inc., certain merchandise, to wit: 525 tierces of lard, of the value of $32,606.19; 260 cases of bellies, of the value of $24,857.78; 1800 cases of dried fruits, of the value of $8,749.58; 1000 cases of corned beef, of the value of $16,277.78; and 300 cases of fat backs, of the value of $23,012.11; being an aggregate value of $105,503.44; all of said merchandise being consigned to Harry Levin, a merchant of Copenhagen, Denmark, and being shipped as aforesaid for transportation to Copenhagen, and to be forwarded, if possible, to Malmo, Sweden.

VII. That on or about the 23rd day of March, 1915, the said firm of Crossman & Sielcken shipped from the

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Port of New York upon the Danish steamer Arkansas, belonging to Det Forenede Dampskibs Selskab, a Danish corporation, certain merchandise, to wit: 190 cases of fat backs and 150 cases of clear bellies, of the total value of $27,649.94, and 1600 cases of corned beef, of the value of $25,957.58; being an aggregate value of $53,607.52; all of said merchandise being consigned to said Harry Levin, and being shipped as aforesaid for transportation to Copenhagen, to be forwarded to Malmo, Sweden.

329 VIII. That on or about the 30th day of March, 1915, the said firm of Crossman & Sielcken shipped from the Port of New York upon the Danish steamer Hellig Olav, belonging to Det Forenede Dampskibs Selskab, a Danish corporation, certain merchandise, to wit: 405 cases of fat backs, of the value of $30,924.14 consigned to said Harry Levin, for transportation to Copenhagen, to be forwarded to Malmo, Sweden.

IX. That on or about the 12th day of April, 1915, the said firm of Crossman & Sielcken shipped from the Port of New York, upon the Swedish steamer Gunborg, belonging to the Gans Steamship Line, certain merchan-
330 dise, to wit: 1500 cases of breakfast food, of the value of $8,210.60; 200 cases of clear bellies, of the value of $16,905.76; and 300 cases of fat backs, of the value of $23,192.39; being an aggregate value of $48,308.75; all of said merchandise being consigned to said Harry Levin, and being shipped as aforesaid for transportation to Gothenburg, Sweden.

X. That said Harry Levin was at the time of the said respective shipments a citizen and subject of the Kingdom of Denmark; that the aforesaid shipments were made pursuant to an agreement of sale between the said firm of Crossman & Sielcken and the said Harry Levin wherein and whereby said Levin agreed to purchase said merchandise at the respective agreed prices hereinabove set forth as the respective values thereof; but by the terms of said agreement of sale, the title to said mer-

chandise was not to pass, nor payment of the purchase price to become due, until the arrival and delivery of said merchandise at its destination.

XI. That on or about the 23rd day of April, 1915, the said firm of Crossman & Sielcken shipped from the Port of New York upon the Swedish steamer Indianic, belonging to Swedish America Mexico Line, Ltd., certain merchandise, to wit: 250 cases clear bellies, 250 cases fat backs and 50 cases fat back ends, of the total value of $43,918.19, and 904 pieces of black walnut lumber, of the value of $5,940.03; being an aggregate value of 332
$49,858.22 (together with other merchandise); all of said merchandise being consigned to the firm of Beckmann & Jorgensen, merchants of Copenhagen, Denmark, and being shipped as aforesaid for transportation to Gothenburg, Sweden.

XII. That on or about the 27th day of April, 1915, the said firm of Crossman & Sielcken shipped from the Port of New York upon the Danish steamer Oscar II, belonging to Det Forenede Dampskibs Selskab, certain merchandise, to wit: 1450 cases of crackers and cereals, of the value of $7,864.66, and 1035 cases of fat backs, of the value of $84,199.36; being an aggregate value of 333
$92,064.02; all of said merchandise being consigned to the said firm of Beckmann & Jorgensen, and being shipped as aforesaid for transportation to Copenhagen, to be forwarded to Malmo, Sweden.

XIII. That the members of the said firm of Beckmann & Jorgensen were at the time of said shipments mentioned in paragraphs XI and XII hereof respectively citizens and subjects of the Kingdom of Denmark; that the said shipments mentioned in paragraphs XI and XII hereof were made pursuant to an agreement of sale between the said firms of Crossman & Sielcken and Beckmann & Jorgensen respectively wherein and whereby said Beckmann & Jorgensen agreed to purchase said merchandise at the respective agreed prices hereinabove set forth as the respective values thereof; but by the

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terms of said agreement of sale, the title to said merchandise was not to pass, nor payment of the purchase price to become due, until the arrival and delivery of said merchandise at its destination.

XIV. That at the time of all the shipments above mentioned, and thereafter until the time of his death as above set forth, said Hermann Sielcken, the senior partner of said firm of Crossman & Sielcken, was in Germany. The other partners, Messrs. Sorenson and Nielsen, were at the office of the said firm in New York
335 City, where they purchased the merchandise and made the shipments hereinbefore set forth. That said merchandise was purchased with funds belonging to the said firm of Crossman & Sielcken, and it was supposed by said Sorenson and Nielsen, and by all the employees of said firm in New York, that said merchandise was the exclusive property of said firm of Crossman & Sielcken; but that in fact, said shipments were made in pursuance of an agreement made by said Hermann Sielcken, on behalf of his said firm of Crossman & Sielcken, with the firm of Theodor Wille composed of Gustav Diederichsen and Georg Georgius, both of whom were citizens and subjects of the Empire of Germany,
336 and who were engaged in business as wholesale merchants at Hamburg, Germany, wherein and whereby it was agreed that the merchandise so to be purchased and shipped should belong in equal undivided shares to the said two firms of Crossman & Sielcken and Theodor Wille respectively, and that the purchase, shipment and sale thereof should be for their joint account as a joint adventure. That all of the members and employees of said firm of Crossman & Sielcken, other than said Hermann Sielcken himself, were in ignorance of said last mentioned agreement at the time of the seizure and condemnation of said merchandise as hereinafter set forth, and for a long time thereafter.

XV. That each one of the said vessels Hilding, Arkansas, Hellig Olav, Gunborg, Indianic and Oscar II, after

leaving the Port of New York carrying the aforesaid merchandise, and before arriving at any port of destination, was stopped upon the high seas by British men of war respectively, and taken to a port or ports in England, where the said merchandise, and each and every item thereof, were respectively seized by the British Admiralty, condemned and sold.

XVI. That claims to all of the aforesaid merchandise were presented by said Sorenson & Nielsen, in the name of and on behalf of the said firm of Crossman & Sielcken, in the Probate, Divorce and Admiralty Division of 338
the High Court of Justice of the Kingdom of Great Britain, sitting as a Prize Court, which Court had jurisdiction over the subject matter and parties in said controversy; that said claims were duly brought on for trial in said Court, before the Right Honorable Sir Samuel Evans, President, on November 19th, 1917, and such proceedings were thereupon had that on the said 19th day of November, 1917, a judgment was duly made and entered in said Court disallowing said claims and condemning said merchandise as lawful prize, upon the ground that said merchandise was intended for an ultimate destination in Germany.

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XVII. That the merchandise above mentioned was seized and condemned as aforesaid by Great Britain in pursuance of the various proclamations and orders in council of the British Government, as a retaliatory measure against the German submarine warfare. That your petitioners thereby suffered a loss, damage or injury in consequence of hostilities or the operations of war, subsequent to July 14th, 1914.

Wherefore your petitioners hereby make claim against the Government of Germany under the provisions of the Treaty between the United States and Germany of August 25th, 1921, and the Agreement between the United States and Germany of August 10, 1922, for the loss sustained by them as aforesaid in the sum of $190,133.05 being one-half of the total value of said merchandise

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($380,266.09), with such allowance for interest as may be due, and any other relief that may be due in the premises.

COLUMBIA TRUST COMPANY,
As Executor of the Will of Hermann Sielcken, deceased.
By G. E. WARREN
Vice-President.

JOHN S. SORENSON
THORLEIF S. B. NIELSEN

341 Attest:
M. M. Morgan,
Asst. Secretary.
(Seal)

State of New York,
County of New York, ss:

George E. Warren, being duly sworn says: I am a Vice-President of Columbia Trust Company, which, as Executor of the Will of Hermann Sielcken, deceased, is the petitioner above named, and am acquainted with the facts set forth in the foregoing petition. I have read
342 the said petition and know the contents thereof and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

G. E. WARREN

Sworn to before me this
29th day of December, 1922.
M. B. Lafounace,
Notary Public.
N. Y. County No. 8, Register's No. 4038.
Cert. filed in Bronx Co. No. 3, Reg. No. 117.
Term expires March 30th, 1924.

(Seal)

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State of New York,
County of New York, ss:

John S. Sorenson, being duly sworn says: That he is one of the petitioners above named. That he has read the foregoing petition and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

JOHN S. SORENSON

Sworn to before me this 344
29th day of December, 1922.
Bernard Rosenthal,
Comm. of Deeds,
City of New York.
My comm. expires Oct. 3, 1924.

(Seal)

State of New York,
County of New York, ss:

Thorleif S. B. Nielsen, being duly sworn says: That he is one of the petitioners above named. That he has 345
read the foregoing petition and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

THORLEIF S. B. NIELSEN

Sworn to before me this
29th day of December, 1922.
Bernard Rosenthal,
Comm. of Deeds,
City of New York.
My comm. expires Oct 3, 1924.

(Seal)

346 **Exhibit M Annexed to Affidavit of Frank C. Sterck.**

Claim dated October 26, 1927, filed before the Mixed Claims Commission by the American Exchange Irving Trust Company, as successor to the Columbia Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Crossman & Sielcken, against Germany and the Zentral-Einkaufs-Gesellschaft.

BEFORE THE MIXED CLAIMS COMMISSION

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UNITED STATES AND GERMANY

ORGANIZED UNDER THE AGREEMENT OF AUGUST 10, 1922,

BETWEEN THE UNITED STATES AND GERMANY

United States of America on behalf of COLUMBIA TRUST COMPANY, (now the American Exchange Irving Trust Company), as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and JOHN S. SORENSEN and THORLEIF S. B. NIELSEN, surviving partners of the firm of Crossman & Sielcken,	List No. 636 Docket No. 8305
VS.	
GERMANY AND ZENTRAL-EINKAUFSGESELLSCHAFT m. b. H., impleaded.	

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MEMORIAL FOR CLAIM

The claimants, Columbia Trust Company (now the American Exchange Irving Trust Company), John S. Sorenson and Thorleif S. B. Nielsen, citizens of the United States, respectfully show to this Commission:

(1) That Hermann Sielcken was on all pertinent dates herein, and until the time of his death on or about October 8, 1917, a citizen of the United States, residing in the United States, although temporarily residing in Germany at the time of his death (Exhibits 1, 2 and 3; Docket No. 8304); that Clara Sielcken (now Clara Sielcken Schwarz), the widow and sole beneficiary of the residuary estate of the said Hermann Sielcken, deceased (Exhibit 4, Docket No. 8304), is, and was on all pertinent dates herein, a citizen of the United States (Exhibits 1 and 2; Docket No. 8304), residing in the United States, although in Germany at the outbreak of the War, and returned to the United States in 1919 (Exhibit 2; Docket No. 8304); that John S. Sorenson and Thorleif S. B. Nielsen are citizens of the United States, and, on all pertinent dates herein, resided in the United States (Exhibits 3 and 5; Docket No. 8304); that the Columbia Trust Company (now the American Exchange Irving Trust Company), is, and was, on all pertinent dates herein, a corporation duly organized and existing under the laws of the State of New York, having its principal place of business in New York City, State of New York (Exhibit 6, Annex A; Docket No. 8304). 350

(2) That the said Hermann Sielcken, deceased, left a Last Will and Testament, wherein he named "Columbia-Knickerbocker Trust Company," executor with respect to all property left by the said Hermann Sielcken in the United States of America, and particularly with respect to the liquidation of the firm of Crossman & Sielcken, hereinafter mentioned (Exhibit 4; Docket No. 8304); that the said Columbia Trust Company is the executor named as "Columbia-Knickerbocker Trust Company" in the said Last Will and Testament (Exhibit 6, Annex A; Docket No. 8304). 351

(3) That said Last Will and Testament of Hermann Sielcken was duly admitted to probate by the Surrogates' Court of New York County in the City of New York on or about the 25th day of January, 1918; and that the said Columbia Trust Company thereupon duly qualified and

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entered upon the discharge of its duties as, and now is, such executor (Exhibit 6, Annex B; Docket No. 8304).

(4) That at all times hereinafter mentioned, up to October 8, 1917, said Hermann Sielcken, John S. Sorenson and Thorleif S. B. Nielsen were engaged in business as exporters, importers and commission merchants, as copartners doing business under the firm name and style of Crossman & Sielcken, having their principal place of business in the Borough of Manhattan, City, County and State of New York; that by their agreement of copart-
353 nership which bore date the 2nd day of June, 1913, it was provided among other things that the capital of said partnership, upon the termination of the partnership from whatever cause, should belong to said Sielcken or to his estate, and that said Sorenson and Nielsen, respectively, should have an interest in the business, consisting of a percentage of the net profits that might be realized therefrom, and that in and by said agreement of copartnership it was further provided that, upon the death of said Sielcken, it should be the duty of the surviving partners to transfer and pay over to the executor of the Will of the deceased partner his capital and the property and
354 business of the firm (Exhibit 3, Annex D; Docket No. 8304).

(5) That all of the customers and business associates of the firm of Crossman & Sielcken were duly informed, in 1913, of the creation of the new partnership of Crossman & Sielcken as aforesaid, in June, 1913 (Exhibit 3, Annex E; Docket No. 8304).

(6) That the said Hermann Sielcken, deceased, provided in his Will aforesaid that the management of the firm business for liquidation should be left in the hands of the said Sorenson and Nielsen to the largest possible degree under the supervision of the executor (Exhibit 4; Docket No. 8304).

(7) That pursuant to the provisions of said agreement of copartnership and of the Will aforesaid, upon the death

of said Hermann Sielcken, said surviving partners, Sorenson and Nielsen, did undertake to collect the assets and to proceed with the liquidation of the business and did transfer and pay over to said Columbia Trust Company, executor, the said capital and property of the said firm then in their possession and/or under their control, and which had come into their possession or control. That said Columbia Trust Company, as such executor, has ever since been and now is engaged in the supervision of the liquidation of the business of said partnership, and by reason of the foregoing, said Sorenson, 356
Nielsen and the Columbia Trust Company, executor, is, and are, entitled to collect and receive all of the assets and credits of said firm of Crossman & Sielcken and to procure and recover upon any and all causes of action and claims of whatever nature, existing in favor of such firm at the time of its dissolution, and that the said Sorenson and Nielsen in addition are entitled to receive each for his own account, twelve and one-half per cent of the net profits realized from the business (Exhibit 3, Annex D, and Exhibit 4; Docket No. 8304).

(8) That the Zentral-Einkaufsgesellschaft m. b. H., hereinafter called "Z.E.G.," is a corporation, with its 357
principal place of business at Berlin, organized under the laws of Germany in or about the month of January, 1915, with a capital stock of M. 45,000,000, of which stock the Imperial German Government originally subscribed M. 29,950,000, and the several German States M. 13,800,000, of which total capital stock the present German Government now owns all but M. 100,000; that the said Z.E.G. succeeded to, and took over, all of the business assets and liabilities of the enterprise theretofore operated by the Reichseinkauf (Empire Purchasing Agency) at Berlin (Exhibit 1).

(9) That on or about the 25th day of September, 1914, the said Reichseinkauf, entered into an agreement with Crossman & Sielcken, under the terms of which the latter were employed to purchase for account of

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Reichseinkauf mixed cargoes of wheat, tea, cocoa and mixed animal food, to be shipped by neutral vessels from American ports to neutral Baltic ports, Crossman & Sielcken to be reimbursed for the invoice price, plus freight and insurance, and to be paid a commission of 10% on the value of the cargo as indicated by the total amount of the invoice, freight and insurance (Exhibits 2 and 3).

(10) That thereafter the Reichseinkauf and Z.E.G. instructed Crossman & Sielcken to stop shipments of
359 wheat and flour and in their place to purchase pure lard, fat backs, near backs and short backs, clear backs, cakes and cereals (Exhibits 4 and 5).

(11) That pursuant to the agreement of September 25, 1914, Crossman & Sielcken purchased for account of Reichseinkauf and shipped several cargoes consigned to persons in Copenhagen, which cargoes arrived safely, and Crossman & Sielcken were duly reimbursed and paid their commission of 10% through Kuhn, Loeb & Company and the National City Bank, both of New York City. The following is a list of the shipments, the amounts of the invoices, including freight and insurance,
360 and the dates upon which Crossman & Sielcken were reimbursed and paid their commission of 10%. (Exhibit 6, page No. 3):

Date Shipped	Steamship	Amt. of Invoice Freight and Ins.	Reimbursements and Commissi Date	Amount
Nov. 13, 1914	Honda	$72,960.77	Jan. 2, 1915	$80,256.85
Nov. 13, 1914	Norfolk	31,325.66	Jan. 2, 1915	34,458.22
Nov. 20, 1914	Mirjam	25,334.49	Jan. 23, 1915	27,867.94
Nov. 20, 1914	Alexandra	77,334.87	Jan. 4, 1915	85,068.36

(12) That in November, 1914, the Reichseinkauf instructed Hermann Sielcken, then in Germany, to have shipments consigned to Harry Levin of Copehagen (Exhibits 4, 8, 9, 10 and 11).

Exhibit M Annexed to Affidavit of Frank C. Sterck

(13) That thereafter Crossman & Sielcken purchased for account of Reichseinkauf and/or Z.E.G., and shipped several cargoes consigned to Harry Levin, Copenhagen, which cargoes arrived safely, and for which Crossman & Sielcken were duly reimbursed and paid their commission of 10%. The following is a list of the shipments and the amounts of the invoices, including freight and insurance, and the dates upon which Crossman & Sielcken were reimbursed and paid their commission of 10%:

Date Shipped	Steamship	Amt. of Invoice Freight and Ins.	Reimbursements and Commissions Date	Amount
Nov. 27, 1914	Tula	$17,699.33	Jan. 15, 1915	$19,469.26
Nov. 27, 1914	Kentucky	11,041.62	Feb. 8, 1915	12,145.78
Dec. 7, 1914	Arkansas	21,154.34	Feb. 5, 1915	23,320.00
Dec. 28, 1914	Curique	19,970.47	Jan. 30, 1915	21,967.52
Jan. 4, 1915	United States	33,814.49	Jan. 30, 1915	37,195.94
Jan. 4, 1915	Dania	15,363.56	Feb. 13, 1915	18,683.56

(14) That in the spring of 1915, Z.E.G. instructed Crossman & Sielcken to ship, consigned to Messrs. Beckman & Jorgensen, of Copenhagen, the shipments purchased for account of Z.E.G. (Exhibits 11 and 12).

(15) That certain shipments of merchandise, purchased for account of Z.E.G., were made by Crossman & Sielcken on the vessels listed below, and consigned to Harry Levin or Messrs. Beckmann & Jorgensen, pursuant to said Agreement, and were seized by the British Naval authorities and were condemned in the British Prize Court as lawful prizes. Crossman & Sielcken have not been reimbursed for the invoice value of the cargoes, insurance and freight, nor paid any part of their 10% commission on said shipments, except for the cargo shipped on March 9, 1915, on the S.S. *United States*, for which reimbursement and commission in full has been received, and except for the sum of $8,050.44 on cargo

shipped on the S.S. *Oscar II* (Exhibit 6, pages 5 and 6, and Exhibit 7, Annex A):

S.S. *Hilding,* sailed February 27, 1915, consigned to Harry Levin.

S.S. *United States,* sailed March 9, 1915, consigned to Harry Levin.

S.S. *Arkansas,* sailed March 23, 1915, consigned to Harry Levin.

S.S. *Hellig Olav,* sailed March 30, 1915, consigned to Harry Levin.

S.S. *Gunborg,* sailed April 13, 1915, consigned to Harry Levin.

S.S. *Indianic,* sailed April 23, 1915, consigned to Beckmann & Jorgensen.

S.S. *Oscar II,* sailed April 28, 1915, consigned to Beckmann & Jorgensen.

(16) That claim is herein made for reimbursement of the invoice value, freight, insurance, and for payment of the commissions due and owing Crossman & Sielcken on the above mentioned shipments, under the terms of said agreement of September 25, 1914, in the total amount of $380,761.54, which said debt is computed as follows (Exhibit 6, page 7, and Exhibit 7):

Steamship	Amt. of Invoice Freight and Ins.	Amount of Commission	Total	Due Date
Hilding	$95,578.29	$9,557.83	$105,136.12	Apr. 27, 1915
Arkansas	48,686.81	4,868.68	53,555.49	Apr. 17, 1915
Hellig Olav	28,105.99	2,810.60	30,916.59	Apr. 17, 1915
Gunborg	43,997.16	4,399.72	48,396.88	June 13, 1915
Indianic	53,471.31	5,347.13	58,818.44	June 23, 1915
Oscar II	83,625.87	8,362.59	91,988.46	May 11, 1915
			$388,811.98	
Less payment crackers and cereals on S.S. Oscar II			8,050.44	
NET AMOUNT DUE			$380,761.54	

(17) That claimants have not been reimbursed and have not received any compensation through insurance or otherwise, for the above cargoes (Exhibit 6, page 7).

(18) That the following books of original record of the firm of Crossman & Sielcken are submitted in support of this claim for examination by the Commission, the return of which is respectfully requested, when they have served their purpose:

Brazil Ledgers J and K.
Invoice books, Brazil Department, No. 138, 139 and 140. 368
African order book, miscellaneous, No. 61.
Export Journal F.
Abstract Book, No. 26.

WHEREFORE, the Columbia Trust Company (now the American Exchange Irving Trust Company), John S. Sorenson and Thorleif S. B. Nielsen, claimants, respectfully make claim against the Government of Germany under the Treaty of Berlin of August 25, 1921, upon the facts herein set forth and the evidence filed in support thereof, in the amount of $380,761.54, together with interest at the rate of 5% per annum on $84,472.08 thereof from April 17, 1915; on $105,136.12 thereof from April 27, 1915; on $83,938.02 thereof from May 11, 1915; on $48,396.88 thereof from June 13, 1915, and on the remaining $58,818.44 thereof from June 23, 1915, to the date of payment respectively, as provided for in said Treaty, together with a proper allowance for expenses and attorneys' fees, and such other and further relief as this Commission may deem just and equitable. 369

Dated, October 26, 1927.

AMERICAN EXCHANGE IRVING TRUST COMPANY, formerly the COLUMBIA TRUST COMPANY, as Executor of the Last Will and Testament of Hermann Sielcken, deceased.

By: Orrin R. Judd,
Vice-President.

JOHN S. SORENSON,
THORLEIF S. B. NIELSEN.

(Seal)

ATTEST:
H. Major
Asst. Secy.

370 *Exhibit M Annexed to Affidavit of Frank C. Sterck*

State of New York,
County of New York, ss:

Orrin R. Judd, being duly sworn, says:

I am a Vice-President of the American Exchange Irving Trust Company, formerly the Columbia Trust Company, which, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, is one of the claimants above named, and am acquainted with the facts set forth in the foregoing memorial. I have read said memorial and know the contents thereof and the same is true
371 to my own knowledge, except as to the facts therein stated to be alleged upon information and belief, and as to those matters I believe it to be true.

ORRIN R. JUDD.

Sworn to before me this
26 day of October, 1927.
G. E. Osborn,
Notary Public,
Queens Co. No. 1298.
Cert. filed in N. Y. Co. No. 102, Reg. No. 8064.
" " " Bronx Co. No. 6, Reg. No. 2824.
372 " " " Kings Co. No. 37, Reg. No. 8041.
Term expires March 30, 1928.

(Seal)

State of New York,
County of New York, ss:

John S. Sorenson, being duly sworn, says:

That he is one of the claimants above named; that he has read the foregoing memorial and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and

belief and that as to those matters he believes it to be true.

JOHN S. SORENSON.

Sworn to before me this
26 day of October, 1927.
Emilie B. Bender,
Notary Public,
Kings Co. No. 148.
Cert. filed in N. Y. County No. 340.
New York Register's No. 8293.
My Commission expires March 30, 1928. 374
(Seal)

State of New York,
County of New York, ss:

Thorleif S. B. Nielsen, being duly sworn, says:

That he is one of the claimants above named; that he has read the foregoing memorial and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief and that as to those matters he believes it to be true. 375

THORLEIF S. B. NIELSEN.

Sworn to before me this
27 day of October, 1927.
Emilie B. Bender,
Notary Public,
Kings Co. No. 148.
Cert. filed in N. Y. County No. 340.
New York Register's No. 8293.
My Commission expires March 30, 1928.

(Seal)

376 **Exhibit N Annexed to Affidavit of Frank C. Sterck.**

Answer of German Government, dated October 15, 1928, filed through its Agent, Karl von Lewinski, before the Mixed Claims Commission.

BEFORE THE MIXED CLAIMS COMMISSION

UNITED STATES AND GERMANY

Organized Under the Agreement of August 10, 1922 Between the United States and Germany.

377

UNITED STATES OF AMERICA on behalf of COLUMBIA TRUST COMPANY (now the American Exchange—Irving Trust Company), as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and JOHN S. SORENSON and THORLEIF S. B. NIELSEN, surviving partners of the firm of Crossman & Sielcken,	Docket No. 8305 List No. 636
VS.	
378 GERMANY and ZENTRAL-EINKAUFSGESELLSCHAFT m. b. H., Impleaded.	

ANSWER OF THE GERMAN AGENT UNDER RULE IV-b (1)

Note: The "Memorial" referred to in the present Answer is the "Memorial for Claim" prepared and submitted by the claimants, which "Memorial for Claim" is attached as "Annex I" to the "Memorial of the United States in Support of the Claim" filed by the Agent of the United States.

Exhibit N Annexed to Affidavit of Frank C. Sterck 379

I. Statement As to Facts.

The facts as stated in the Memorial will not be disputed, with the following exceptions:

(a) In Par. (1) of the Memorial it is contended that Hermann Sielcken was, on all dates pertinent herein and until the time of his death on or about October 8, 1917, a citizen of the United States, "residing in the United States, although temporarily residing in Germany at the time of his death"; it is also contended that Clara Sielcken is, and was on all dates pertinent herein, a citizen of the United States, "residing in the United States, although in Germany at the outbreak of the War." These contentions are contradicted by the facts that the late Hermann Sielcken and his wife owned, maintained and inhabited a palatial estate near Baden-Baden (Germany), while in New York they had merely a suite in a hotel; that in the Last Will and Testament of March 23, 1914 (Docket No. 8304, Exhibit 4), which Last Will and Testament was apparently made in New York, Hermann Sielcken called himself "Hermann Sielcken, of Baden-Baden, Germany"; that in the same Will he directed that all of his estate should be administered and distributed in Germany, under the laws and in the tribunals of "Germany, my domicile"; and that in the Decree of the Surrogate's Court of the County of New York of January 26, 1918 (Docket No. 8304, Exhibit 6-B), admitting the said Will to probate, it was expressly stated that Hermann Sielcken was at the time of his death "a resident of Baden-Baden, Germany."

380

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(b) In Par. (2) of the Memorial it is contended that Hermann Sielcken "left a Last Will and Testament, wherein he named 'Columbia-Knickerbocker Trust Company' executor with respect to all property left by the said Hermann Sielcken in the United States of America, and particularly with respect to the liquidation of the firm of Crossman & Sielcken * * *"

This statement is neither accurate nor complete. The pertinent provisions of said Will read as follows:

382 *Exhibit N Annexed to Affidavit of Frank C. Sterck*

"I appoint Gustav Di derichsen, and his brother Heinrich Diederichsen of Kiel, Germany, and my brothers-in-law, Carl Isenberg and Richard Isenberg, residing in Germany, the executors of this my will.

"I also appoint the Columbia Knickerbocker Trust Company of New York, executor of this will, for the purpose of collecting and converting into cash all my property situated in the United States of America, and I direct said Company to transmit and pay over all the net proceeds thereof to my said executors in Germany for administration and distribution by them.

383 "It is my wish that all my estate should be administered and distributed in Germany, under the laws and in the tribunals of Germany, my domicile.

* * * * * *

"Whereas, since the death of my late partner, George W. Crossman, in the firm name of Crossman & Sielcken, I have become the sole owner of the property and business of that firm and I have admitted into partnership John S. Sorenson and Thorlief S. B. Nielsen to continue the business of the said late firm under the same firm name; and the Articles of Co-partnership made between us, bearing date the "2nd day of June, 1913, provided that in case
384 of my death, the said partnership shall come to an end and that it shall then be the duty of the surviving partners to transfer and pay over to the executor of my Will all the capital property and business of the said firm,

"It is my desire that my executor, the Columbia Knickerbocker Trust Company should leave the management of the firm business for liquidation in the hands of the said Sorenson and Nielsen, to the largest possible degree under the direct supervision of the said trust Company."

This language shows that the task entrusted to the Columbia-Knickerbocker Trust Company was more restricted than would appear from the above statement in the Memorial.

The Memorial fails to mention the essential fact that the Will of March 23, 1914, was superseded by a subsequent Joint Will of Hermann Sielcken and his wife, made

at Baden-Baden on February 18, 1917 (Docket No. 8304, Exhibit 8, Annex A), wherein the appointment of the Columbia Knickerbocker Trust Company was revoked.

It should also be added that on March 23, 1920, an agreement was concluded between the German executors, the Columbia Trust Company, and the widow of Hermann Sielcken, the purpose of which agreement apparently was to avoid disputes as to the validity of the administrative acts of the Columbia Trust Company and to facilitate and expedite the liquidation of the estate (docket No. 8304, Exhibit 6, Annex C).

386

(c) In Par. (3) of the Memorial it is contended that after the Will of March 23, 1914, had been admitted to probate the Columbia Trust Company "duly qualified and entered upon the discharge of its duties as, and now is, such executor."

Even assuming that the Columbia Trust Company did acquire the legal status of executor, the contention that said Company "now is executor" would not be supported by the evidence on record. The record is silent as to the activities of the Columbia Trust Company in its alleged capacity as executor, regarding the progress made in the liquidation of the estate, and regarding the ultimate fate of the net proceeds thereof. The Columbia Trust Company is requested to make a full and detailed statement covering these points which statement should be accompanied by documentary evidence to support its correctness. The Columbia Trust Company is especially requested to state whether it ever made a final report or accounting to the Surrogate's Court or to the Alien Property Custodian, to the German executors or to the residuary heir, and whether it was ever discharged by any of these agencies and/or persons.

387

(d) A similar disclosure is requested concerning the activities of the claimants John S. Sorenson and Thorleif S. B. Nielsen with regard to whom it is contended in Par. (7) of the Memorial that, in their capacity as liquidators, they are still entitled "to collect and receive all of the assets and credits of said firm of Crossman & Sielcken

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and to procure and recover upon any and all causes of action and claims of whatever nature, existing in favor of such firm at the time of its dissolution * * *"

It is pertinent to remark, in this connection, that in a cable to the firm of Theodor Wille under date of February 4, 1928, Mr. Nielsen stated: "* * * I have had nothing to do with the liquidation since estate settled with me in June nineteen hundred twentyone * * *"

(e) In Pars. (8) to (17) of the Memorial, reference is made to the business transacted by the firm of Crossman
389 & Sielcken with the Reichseinkauf and/or the Zentral-Einkaufsgesellschaft m. b. H. However, the Memorial omits the essential fact that the disputes resulting from this business were made the subject of an arbitration between the German executors of the Sielcken Estate and the Z. E. G.; that the Court of Arbitration entered an interlocutory decision on May 31, 1918, and that on the basis of this decision, a compromise was concluded whereby the loss incurred was divided between the parties, the German executors waiving all further claims against the Z. E. G. (Exhibits a-m filed herewith).

II. Issues of Law.

390

A. The record fails to show that either the Columbia Trust Company or John S. Sorenson or Thorleif S. B. Nielsen is entitled to make the present claim.

(1) The Columbia Trust Company has never been executor of the Hermann Sielcken Estate. The Letters Testamentary granted unto the Columbia Trust Company by the Surrogate's Court of the County of New York, on January 26, 1918 (Docket No. 8304, Exhibit 6, Annex B), were manifestly issued in ignorance of the Joint Testament of February 18, 1917 (Docket No. 8304, Exhibit 8, Annex A), superseding the Testament of March 23, 1914 (Docket No. 8304, Exhibit 4). The said Letters Testamentary were, therefore, devoid of legal effect.

The agreement of March 23, 1920 (Docket No. 8304, Exhibit 6, Annex C), could not possibly vest in the Columbia

Trust Company the legal character of executor not provided for in the Will of Hermann Sielcken. Whatever may have been the intention of this instrument, its legal effect was, at best, to ratify the preceding administrative acts of the Columbia Trust Company and to confer upon the said Columbia Trust Company a limited power of attorney derived from the authority of the German executors.

Even under the assumption that the Columbia Trust Company did obtain the position of executor of the Will of Hermann Sielcken, deceased, of March 23, 1914, the 392
record fails to support the contention that the authority to act in such capacity still exists. And even under the assumption that such authority still attaches to the Columbia Trust Company, the said authority would not include the right to collect the alleged debt under consideration, for the reason that said debt is not a part of the property of Hermann Sielcken, deceased which is "situated in the United States of America."

It is pertinent to state here that the parallel claim which is pending before the District Court of the Southern District of the State of New York and which has been filed on the identical facts that form the basis of the instant claim, was not presented by the Columbia Trust 393
Company but by John S. Sorenson and Thorleif S. B. Nielsen alone, in their alleged capacity as surviving partners of the firm of Crossman & Sielcken.

(2) The right of John S. Sorenson and Thorleif S. B. Nielsen to make the present claim in their alleged capacity of *liquidators* of the firm of Crossman & Sielcken, will depend on the question whether or not the liquidation proceedings are still pending and whether said Sorenson and Nielsen have ever been discharged.

That John S. Sorenson and Thorleif S. B. Nielsen are not entitled to make the present claim in their capacity of *partners* of the firm of Crossman & Sielcken, is manifest from the record as it stands. According to the Partnership Agreement (Docket No. 8304, Exhibit 2, Annex D), John S. Sorenson and Thorleif S. B. Nielsen never

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had any right or interest of their own in any property or other asset belonging to the firm of Crossman & Sielcken. The entire business capital was owned by Hermann Sielcken alone, and he alone had to bear and pay all losses of the firm. After the partnership had been dissolved by the death of Hermann Sielcken, the entire business capital became a part of the Hermann Sielcken Estate. There was no liquidation of the firm in the sense of a distribution of the business capital among the surviving members of the dissolved partnership. Under Article 11 of the Partner-
395 ship Agreement, the surviving partners had merely to transfer and pay over to the executor of Hermann Sielcken the capital and also all property and business of the firm. It is illustrative, in that respect, that apparently the entire business capital of the firm of Crossman & Sielcken was taken over by the Alien Property Custodian under the Trading with the Enemy Act, no exception being made with regard to any portion of the business capital in favor of Messrs. Sorenson & Nielsen. The interest of John S. Sorenson and Thorlief S. B. Nielsen was confined absolutely to their share of 12-1/2 per cent of the net profits of the business.

Assuming that the alleged debt exists and, furthermore,
396 that the collection of such debt would increase the net income for the last business year, the only right of said Sorenson and Nielsen would be that of making claim against the Estate of Hermann Sielcken for their share in such additional net profits of the business. Whether or not even such a claim could be asserted is doubtful in the light of the provision of Article XIII of the Partnership Agreement. According to this Article, neither of the two persons in question is entitled to bring any action against the Estate of Hermann Sielcken for any share is the profits of the business, other than or different from that fixed and established by the balance sheets.

B. The claim is contested for the further reason that the compromise concluded by the German executors with regard to the legal relations between the Hermann Sielcken Estate and the Z. E. G. is binding upon the firm of

Crossman & Sielcken in liquidation. This defense will be based on the following alternative considerations:

(1) Under the Partnership Agreement all assets and liabilities of the firm of Crossman & Sielcken became, upon the death of Hermann Sielcken, assets and liabilities of his estate, which estate was subject, under the Will of February 18, 1917 (Docket No. 8304, Exhibit 8, Annex A), to the sole administration of the four German executors appointed in said Will. Assuming that the claimants herein had authority to administer that part of the estate which had formerly been the business capital of the firm 398
of Crossman & Sielcken, such authority was derived from the authority of the German executors. Even under that assumption, the claimants were legally bound by the decisions of the German executors.

(2) Even under the New York testament (Docket No. 8304, Exhibit 4), the authority of the Columbia-Knickerbocker Trust Company was restricted to the activities connected with collecting and converting into cash all of Hermann Sielcken's property located in the United States of America, after completion of which the said Company was directed to transmit and pay over all the net proceeds to the German executors for administration and 399
distribution. It follows that even under this Will, the German executors had control of the entire estate. The Columbia Trust Company was merely an instrument for facilitating the technicalities of the liquidation of Hermann Sielcken's property in the United States. Even under this Will, the Columbia Trust Company was subordinate to the German executors, and it must be assumed that the decisions of said executors are binding upon the Columbia Trust Company.

(3) Moreover, it appears from the record that the compromise whereby the German executors renounced all rights against the Z. E. G. was ratified by the Columbia Trust Company and/or John S. Sorenson and/or Thorleif S. B. Nielsen, at least by implication. In this connection, the following points are material:

400 *Exhibit N Annexed to Affidavit of Frank C. Sterck*

(a) In the summer of the year 1919 Mr. Nielsen was in Hamburg for the purpose of discussing the affairs of the Hermann Sielcken Estate. It can hardly be doubted that the compromise concluded by the German executors was discussed on that occasion. There is nothing to indicate that Mr. Nielsen protested.

(b) In August, 1919, the situation of the Sielcken property in Germany was further discussed by Mr. Hotchkiss, for many years a friend and legal adviser to Mrs. Sielcken, with the German executors and their counsel, Dr.
401 Kaemmerer. It can scarcely be assumed that the compromise effected between the German executors and the Z. E. G. remained undiscussed on that occasion. There is no indication of a protest by Mr. Hotchkiss.

(c) In a letter dated March 23, 1920, to the firm of Crossman & Sielcken in liquidation, Mr. Theodor Wille of Hamburg referred to the arbitration which had been resorted to in connection with the disputes with the Z. E. G. In the reply letter of May 21, 1920, Nielsen, signing on behalf of Crossman & Sielcken in liquidation, took note of the communication without making any protest (Exhibits m and n).

402 (d) One-half of the loss sustained by the firm of Crossman & Sielcken in connection with the Z. E. G. transaction was charged to the firm of Theodor Wille. There is nothing to indicate that such charge was made with a reservation, which would indicate that the loss was considered final by the claimants herein.

(e) Finally, a conclusive ratification of the compromise concluded by the German executors must be found in the attitude adopted by the claimants herein in the proceedings before the Mixed Claims Commission. It appears that up to the end of the war, all persons interested in the matter under consideration were in perfect harmony. They were connected by close relationship or by bonds of intimate friendship. In this situation it was obviously quite unexpected when the Columbia Trust Company—a mere instrument in the hands of the German executors—

filed with the Mixed Claims Commission claims against the Z. E. G. and Theodor Wille. Upon the complaint of Theodor Wille, which made reference to an understanding with Mrs. Schwarz (the only residuary heir), John S. Sorenson and Thorleif S. B. Nielsen promptly withdrew their claim (Exhibit o). Mr. Leonard B. Smith, counsel employed by the Columbia Trust Company, confirmed that immediate steps had been taken "to discontinue the annoyance to Mr. Diederichsen." In the same letter Mr. Smith explained that when the claim was filed it was thoroughly understood that it was only being filed for 404
the protection of the executor and that the claim would probably never be prosecuted (Exhibit p). To the same effect is a letter written by Messrs. Sorenson and Nielsen to Mr. Theodor Wille, under date of February 2, 1924 (Exhibit q). On February 7, 1924, the German Agency was formally notified by the American Agency that the claim had been officially withdrawn (Exhibit s). In this situation, there can be no doubt that all persons concerned were fully conversant with the question under discussion, and the formal abandonment of the claim must be accepted as a conclusive ratification of the compromise concluded by the German executors. If, in spite of this state of facts, the claimants intend to dispute the binding 405
force of the compromise, they should explain fully the events leading up to the reinstatement of the claim, which occurred almost four years after its formal abandonment (Exhibit t). The claimants are requested to produce a complete statement of these events, which statement should be accompanied by a full disclosure of all correspondence referring thereto which was exchanged between claimants and the German executors, the residuary heir and the respective counsel of these persons, and of all memoranda in the possession of any of such persons, having to do with conferences at which this question was discussed.

C. In the alternative, the claim will be contested for the reason that the Z. E. G. would be under no legal obligation to make the payment demanded in the instant claim

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even if the compromise concluded with the German executors were not binding. The legal basis for this defense will be found in the arbital decision filed herewith as Exhibit d.

(Sgd) KARL von LEWINSKI
Agent of Germany.

Washington, D. C.

October 15, 1928

Of Counsel:
407 (Sgd.) M. v. d. Decken

408

Exhibit O Annexed to Affidavit of Frank C. Sterck. 409

Claim No. 38530 filed with the Alien Property Custodian on October 29, 1927, by the American Exchange Irving Trust Company, Executor of the Last Will and Testament of Hermann Sielcken, deceased, and by Sorenson and Nielsen, as Liquidators of the firm of Crossman & Sielcken.

Alien Property Custodian
Received Oct. 29, 1927
Noted
Ans'd. M. O. D.
Date 10/29/27

This claim must be filed in duplicate and one copy at least must be properly executed and the execution authenticated. Send both copies with any supporting documents to 410

Do Not Fill Out This Page.

ALIEN PROPERTY CUSTODIAN
Washington, D. C.

ALIEN PROPERTY CUSTODIAN.

NOTICE OF CLAIM PURSUANT TO SECTION 9 OF "TRADING WITH THE ENEMY ACT."

411

Claim No. 38530

Trust No. 592

Claimant. American Exchange Irving Trust Co.

Record Ownership.

Adverse.

Debt.

Reporter.

A.P.C.
Claim Section
Received
Oct. 29, 1927
Referred to.....
Answered .....
Date .....
No. .....

412 *Exhibit O Annexed to Affidavit of Frank C. Sterck*

To HOWARD SUTHERLAND,
ALIEN PROPERTY CUSTODIAN,
Washington, D. C.

The undersigned, hereinafter referred to as claimant, desiring to take advantage of section 9 of the "Trading with the Enemy Act," hereby gives you notice of claim as follows, and hereby agrees to furnish such other information and proof as you may require.

1. Name of claimant (individual, partnership, association, corporation): American Exchange Irving Trust Company (formerly known as Columbia Trust Company), John S. Sorenson, Thorleif S. B. Nielsen.

413

2. Address of claimant: American Exchange Irving Trust Company, Columbia Branch, 60 Broadway, New York City, John S. Sorenson, 64 Water Street, New York City, Thorleif S. B. Nielsen, 101 Front Street, New York City.

3. Name of person (formerly determined an enemy or ally of enemy) whose property is affected by this claim: Zentral-Einkaufsgesellschaft, m. b. H.

414

4. Residence or last known address of person named in paragraph 3: 21 Behrenstrasse, Berlin, Germany

5. Name of any other persons, if known to claimant, who have any interest whatever in within claim: no entry

6. Address or addresses of such person or persons: .....

7. If the claim, notice of which is hereby given, is made for certain specific property, or for an interest in property, the following questions must be answered: .....

(a) The said property was conveyed, transferred, assigned, or delivered to Alien Property Custodian by:

Address .....
(No.) (Street) (City) (Country)

Exhibit O Annexed to Affidavit of Frank C. Sterck 415

(b) The following is an accurate description of the property affected by this notice of claim (this description must be sufficiently complete to identify the property):

8. The nature of the claim, notice of which is hereby given, is as follows: (If the claim is for only part of the property, describe that part; if of an interest, state precisely what the interest is; if of a debt, state fully the nature thereof, how it is evidenced, and whether there are any set-offs or counterclaims. Attach verified copies of all papers relied on to support claim.) (See Annex A) 416

9. The claimant represents and alleges that claimant now and since (See Annex B) ..... has
(Date)

been a .....
(Citizen, corporation, association, partnership)

of ..... and is the
(Country, nation, or free city)

owner of the property claimed and entitled to the return of such property or payment under the provisions of Section 9 of the "Trading with the Enemy Act," that no person or persons whatsoever, except as above stated, have any interest in or lien upon the proceeds of the claim set forth in the within notice; that this notice is not filed in collusion with any enemy or ally of enemy, or any other person or persons for the purpose of avoiding the terms and provisions of the "Trading with the Enemy Act"; that the claim herein referred to is in all respects 417

418 *Exhibit O Annexed to Affidavit of Frank C. Sterck*

bona fide, and that there are no set-offs, counterclaims, or defenses, except as herein stated.

Dated October 26, 1927

AMERICAN EXCHANGE IRVING TRUST COMPANY
By Orrin R. Judd
Vice President

(Signature of party making claim)

JOHN S. SORENSON
THORLEIF S. B. NIELSEN

(Seal)

419

(Partnerships should sign by member or duly authorized representative. Corporations or associations should sign by officer or duly authorized representative, and should affix corporate or official seal.)

Attest H Major
Assistant Secretary

ANNEX A.

8. Claim is made for a balance of $380,761.54, with interest, due claimants American Exchange Irving Trust
420 Company (formerly known as Columbia Trust Company), executor of the last Will and Testament of Hermann Sielcken, deceased, and claimants Sorenson and Nielsen, as liquidators of the firm of Crossman & Sielcken, an American co-partnership, composed of Hermann Sielcken, deceased, John S. Sorenson and Thorleif S. B. Nielsen. The claim arises out of the following transactions:

In September, 1914, Crossman & Sielcken were employed by the Reichseinkauf to purchase for its account mixed cargoes of food stuffs to be shipped by neutral vessels from American ports to neutral Baltic ports, Crossman & Sielcken to be reimbursed for the invoice price, plus freight and insurance and to be paid a commission of 10% on the value of the cargo as indicated by the total amount of the invoice, freight and insurance.

In January, 1915, the business of the Reichseinkauf

was taken over by Zentral-Einkaufsgesellschaft and pursuant to its instructions Crossman & Sielcken purchased for account of Zentral-Einkaufsgesellschaft and shipped upon the vessels hereinbelow named, merchandise of which the invoice price, freight and insurance and commissions were of the amounts hereinbelow designated, no part of which has been reimbursed or paid to Crossman & Sielcken, except the sum of $8,050.44:

422

Steamship	Amt. of Invoice Freight & Ins.	Amount of Commission	Total	Due Date
Hilding	$95,578.29	$9,557.83	$105,136.12	April 27, 1915
Arkansas	48,686.81	4,868.68	53,555.49	April 17, 1915
Hellig Olav	28,105.99	2,810.60	30,916.59	April 17, 1915
Gunborg	43,997.16	4,399.72	48,396.88	June 13, 1915
Indianic	53,471.31	5,347.13	58,818.44	June 23, 1915
Oscar II	83,625.87	8,362.59	91,988.46	May 11, 1915
			$388,811.98	
Less payment crackers and cereals on SS Oscar II			8,050.44	
Net Amount Due			$380,761.54	

423

A. P. C.
Claim Section
Received
Oct 29 1927
Referred to
Answered
Date
No.

Claimants have not been reimbursed and have not received any compensation through insurance or otherwise for the above cargoes except as above noted and there are no set-offs or counterclaims.

424 *Exhibit O Annexed to Affidavit of Frank C. Sterck*

ANNEX B.

9. Claimants represent and allege that claimant, American Exchange Irving Trust Company (formerly known as Columbia Trust Company) now and since its incorporation under the laws of the State of New York in 1871, has been a corporation of the State of New York; that claimant, John S. Sorenson, now and since February 24, 1887, has been a citizen of the United States of America and that claimant, Thorleif S. B. Nielsen, now
425 and since October 5, 1886, has been a citizen of the United States of America and said claimants are entitled to the payment of said debt under the provisions of Section 9 of the "Trading with the Enemy Act"; that no person or persons whatsoever, except as above stated, have any interest in or lien upon the proceeds of the claim set forth in the within notice; that this notice is not filed in collusion with any enemy or ally of enemy, or any other person or persons for the purpose of avoiding the terms and provisions of the "Trading with the Enemy Act"; that the claim herein referred to is in all respects bona fide and that there are no set-offs, counterclaims or defenses, except as herein stated.

426

A. P. C.
Claim Section
Received
Oct 29 1927
Referred to
Answered
Date
No.

Exhibit O Annexed to Affidavit of Frank C. Sterck 427

AFFIDAVIT OF INDIVIDUAL MAKING CLAIM.

State of New York
County of New York ss:

I swear (or affirm) that the foregoing statements are true and correct.

JOHN S. SORENSON

Subscribed and sworn to before me this 26 day of October, 1927

428

EMILIE B. BENDER
Emilie B. Bender
Notary Public
Kings County No. 148
Cert. filed in N. Y. County No. 340
New York Register's No. 8293
My Commission expires March 30, 1928

(Seal)

AFFIDAVIT OF MEMBER OR REPRESENTATIVE OF PARTNERSHIP MAKING CLAIM. 429

State of .....

ss:

County of .....

I swear (or affirm) that I am ..... of the partnership making foregoing claim, and that the foregoing statements are true and correct.

.....

Subscribed and sworn to before me this ..... day of ....., 192

.....

.....

430 *Exhibit O Annexed to Affidavit of Frank C. Sterck*

AFFIDAVIT OF OFFICER OR REPRESENTATIVE OF CORPORATION OR ASSOCIATION MAKING CLAIM.

State of New York
County of New York ss:

I swear ~~or affirm~~ that I am ~~the~~ Vice President of the corporation ~~association~~ making the foregoing claim, and that the foregoing statements are true and correct.

ORRIN R. JUDD

431 Subscribed and sworn to before me this 26th day of October, 1927

G. E. OSBORNE
G. E. Osborne
Notary Public,

Queens County No. 1298
Cert. filed in N. Y. Co. No. 102 Reg. No. 8064
Cert. filed in Bronx Co. No. 6 Reg. No. 2924
Cert. filed in Kings Co. No. 37, Reg. No. 8041
Term expires March 30, 1928

(Seal)

State of New York
432 County of New York ss:

I swear that the foregoing statements are true and correct.

THORLEIF S. B. NIELSEN

Subscribed and sworn to before me this
27th day of October 1927.
Emilie B. Bender
Emilie B. Bender
Notary Public
Kings County No. 148
Cert. filed in N. Y. County No. 340
New York Register's No. 8293
My Commission expires March 30, 1928
(Seal)

A. P. C.
Claim Section
Received Oct. 29, 1927
Referred to .....
Answered .....
Date .....

Exhibit P Annexed to Affidavit of Frank C. Sterck. 433

Letter dated October 27, 1927 to Alien Property Custodian from Barnes, Avery & Whiting, enclosing Claim No. 38530.

Telephone: Rector 1703-1704

Cable Address: Averwh

BARNES, AVERY & WHITING

100 Broadway

Brainard Avery	Alien Property Custodian	434
Earl B. Barnes	Received Oct. 29, 1927	
Jay E. Whiting	Noted 11/1/27 Date.....	
Geo. O. Castell	Ans'd B. J. Date.....	

New York October 27th, 1927.

Hon. Howard Sutherland,
Alien Property Custodian,
Washington, D. C.

Dear Sir:

435

re: American Exchange Irving Trust Company v. Alien Property Custodian, *et al.*

We beg to file herewith duplicate notice of claim for the recovery of a debt due from Zentral-Einkaufsgesellschaft, which claim is made against property of that corporation seized by the Alien Property Custodian and held by him or by the Treasurer of the United States. This notice is served pursuant to Section 9, subsection (a) of the "Trading with the Enemy Act," as amended.

Please note that we do not intend to make application to the President for the allowance of this claim but will proceed to institute the suit in equity as prescribed in the statute, for the enforcement of the same.

436 *Exhibit P Annexed to Affidavit of Frank C. Sterck*

Will you be good enough to acknowledge receipt of the filing of this claim and oblige.

Very truly yours,

BARNES AVERY & WHITING

B/M Attys for Claimants.

A. P. C.
Claim Section
Received
Oct. 29, 1927

437 Referred to .....
Answered .....
Date .....
No. .....

438

Exhibit Q Annexed to Affidavit of Frank C. Sterck. 439

Claim No. 38566, dated November 12, 1927, filed with the Alien Property Custodian by John S. Sorenson and Thorleif S. B. Nielsen, as the surviving partners of the firm of Crossman & Sielcken.

This claim must be filed in duplicate and one copy at least must be properly executed and the execution authenticated. Send both copies with any supporting documents to

ALIEN PROPERTY CUSTODIAN 440

WASHINGTON, D. C.

(Do not fill out this page.)

441

442 *Exhibit Q Annexed to Affidavit of Frank C. Sterck*

ALIEN PROPERTY CUSTODIAN.

NOTICE OF CLAIM PURSUANT TO SECTION 9 OF "TRADING WITH THE ENEMY ACT."

Claim No. 38566

443 Trust No. 592

Claimant. John S. Sorenson and Thorleif

Record Ownership.

Adverse.

Debt.

Reporter.

444

A. P. C.
Claim Section
Received
Nov. 12, 1927
Referred to .....
Answered .....
Date .....
No. .....

To Howard Sutherland,
Alien Property Custodian,
Washington, D. C.

The undersigned, hereinafter referred to as claimant, desiring to take advantage of section 9 of the "Trading with the Enemy Act," hereby gives you notice of claim,

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~~and makes application to the President for the allowance thereof,~~ as follows, and hereby agrees to furnish such other information and proof as you may require.

1. Name of claimant (individual, partnership, association, corporation): John S. Sorenson and Thorleif S. B. Nielsen, as the surviving partners of the firm of Crossman & Sielcken.

2. Address of claimant: John S. Sorenson, 64 Water Street, New York City. Thorleif S. B. Nielsen, 101 Front Street, New York City. 446

3. Name of person (formerly determined an enemy or ally of enemy) whose property is affected by this claim: Zentral-Einkaufsgesellschaft, m. b. H.

4. Residence or last known address of person named in paragraph 3: 21 Behrenstrasse, Berlin, Germany.

5. Name of any other persons, if known to claimant, who have any interest whatever in within claim: no entry

6. Address or addresses of such person or persons: .....

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7. If the claim, notice of which is hereby given, is made for certain specific property, or for an interest in property, the following questions must be answered: .....

(a) The said property was conveyed, transferred, assigned, or delivered to Alien Property Custodian by:

.....

Address .....

(No.) (Street) (City) (Country)

(b) The following is an accurate description of the property affected by this notice of claim (this description must be sufficiently complete to identify the property):

.....

.....

.....

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8. The nature of the claim, notice of which is hereby given, is as follows: (If the claim is for only part of the property, describe that part; if of an interest, state precisely what the interest is; if of a debt, state fully the nature thereof, how it is evidenced, and whether there are any set-offs or counterclaims. Attach verified copies of all papers relied on to support claim.)

(See Annex A)

9. The claimant represents and alleges that claimant

449 now and since (See Annex B) .....
(Date)

has been a .....
(Citizen, corporation, association, partner-

..... of .....
ship) (Country, nation, or free city)

and is the owner of the property claimed and/or entitled to the return of such property or payment under the provisions of Section 9 of the "Trading with the Enemy Act," that no person or persons whatsoever, except as above stated, have any interest in or lien upon the proceeds of the claim set forth in the within notice; that

450 this notice is not filed in collusion with any enemy or ally of enemy, or any other person or persons for the purpose of avoiding the terms and provisions of the "Trading with the Enemy Act"; that the claim herein referred to is in all respects bona fide, and that there are no set-offs, counterclaims, or defenses, except as herein stated.

Dated November 11th, 1927

(Signature of party making claim)

JOHN S. SORENSON
THORLEIF S. B. NIELSEN
(Partnerships should sign by member or duly authorized representative Corporations or associations shou sign by officer or duly authoriz representative, and should affix c porate or official seal.)

(Seal)

Exhibit Q Annexed to Affidavit of Frank C. Sterck

ANNEX A.

8. Claim is made for a balance of $380,761.54, with interest, due claimants, Sorenson and Nielsen, as the surviving partners of the firm of Crossman & Sielcken, an American co-partnership, composed of Herman Sielcken, deceased, John S. Sorenson and Thorleif S. B. Nielsen. The claim arises out of the following transactions:

In September, 1914, Crossman & Sielcken were employed by the Reichseinkauf to purchase for its account mixed cargoes of food stuffs to be shipped by neutral vessels from American ports to neutral Baltic ports, Crossman & Sielcken to be reimbursed for the invoice price, plus freight and insurance and to be paid a commission of 10% on the value of the cargo as indicated by the total amount of the invoice, freight and insurance.

In January, 1915, the business of the Reichseinkauf was taken over by Zentral-Einkaufsgesellschaft and pursuant to its instructions Crossman & Sielcken purchased for account of Zentral-Einkaufsgesellschaft and shipped upon the vessels hereinbelow named, merchandise of which the invoice price, freight and insurance and commissions were of the amounts hereinbelow designated, no part of which has been reimbursed or paid to Crossman & Sielcken, except the sum of $8,050.44:

Steamship	Amt. of Invoice Freight & Ins.	Amount of Commission	Total	Due Date
Hilding	$95,578.29	$9,557.83	$105,136.12	April 27, 1915
Arkansas	48,686.81	4,868.68	53,555.49	April 17, 1915
Hellig Olav	28,105.99	2,810.60	30,916.59	April 17, 1915
Gunborg	43,997.16	4,399.72	48,396.88	June 13, 1915
Indianic	53,471.31	5,347.13	58,818.44	June 23, 1915
Oscar II	83,625.87	8,362.59	91,988.46	May 11, 1915
		35,346.55	$388,811.98	
Less payment crackers and cereals on SS Oscar II			8,050.44	
Net Amount Due			$380,761.54	

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Claimants have not been reimbursed and have not received any compensation through insurance or otherwise for the above cargoes except as above noted and there are no set-offs or counterclaims.

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ANNEX B.

9. Claimants represent and allege that claimant, John S. Sorenson, now and since February 24, 1887, has been a citizen of the United States of America and that claimant, Thorleif S. B. Nielsen, now and since October 5, 1886, has been a citizen of the United States of America
456 and said claimants are entitled to the payment of said debt under the provisions of Section 9 of the "Trading with the Enemy Act"; that no person or persons whatsoever, except as above stated, have any interest in or lien upon the proceeds of the claim set forth in the within notice; that this notice is not filed in collusion with any enemy or ally of enemy, or any other person or persons for the purpose of avoiding the terms and provisions of the "Trading with the Enemy Act"; that the claim herein referred to is in all respects bona fide and that there are no set-offs, counterclaims or defenses, except as herein stated.

Exhibit Q Annexed to Affidavit of Frank C. Sterck 457

Affidavit of Individual Making Claim.

State of .....
County of ..... ss:

I swear (or affirm) that the foregoing statements are true and correct.

.....

Subscribed and sworn to before me this.....day of ....., 192.....

..... 458
.....

Affidavit of Member or Representative of Partnership Making Claim.

State of New York,
County of New York, ss:

We swear that we are the surviving partners of the partnership making foregoing claim, and that the foregoing statements are true and correct. 459

JOHN S. SORENSON
THORLEIF S. B. NIELSEN

Severally Subscribed and sworn to before me this
11th day of November, 1927.
George O. Castell
George O. Castell
Notary Public.
New York County No. 78.
New York Register's No. 8115.
Commission Expires March 30, 1928.

460 *Exhibit Q Annexed to Affidavit of Frank C. Sterck*

Affidavit of Officer or Representative of Corporation or Association Making Claim.

State of .....
County of ..... ss:

I swear (or affirm) that I am the ..... of the corporation/association making the foregoing claim, and that the foregoing statements are true and correct.

.....

461 Subscribed and sworn to before me this.....day of ....., 192....

.....
.....

A. P. C.
Claim Section
Received
Nov. 12, 1927
Referred to .....
Answered .....
Date .....
No. .....

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Exhibit R Annexed to Affidavit of Frank C. Sterck. 463

Letter dated November 12, 1927, from R. S. Doyle of the firm of Hopkins, Starr, Hopkins & Hamel, Washington, D. C., to the Alien Property Custodian, transmitting Claim No. 38566.

HOPKINS, STARR, HOPKINS & HAMEL

LAWYERS

Southern Building

WASHINGTON, D. C.

Telephone Franklin 630 464

Hopkins, Starr & Hopkins
110 So. Dearborn Street
Chicago

Albert L. Hopkins
Merritt Starr
John Lamar Hopkins
Frederick Dickinson
Harry B. Sutter
Jay C. Halls
Donald J. De Wolfe
George K. Bowden
Edward H. Mc Dermott
Samuel G. Clauson
John Enrietto
O. John Rogge
Peter Leland Wentz

Charles D. Hamel
Richard S. Doyle
Lee I. Park
Benjamin H. Saunders

Cl 38566
Alien Property Custodian 465
Received Nov. 12, 1927
Noted ..... Date .....
Ans'd M. O. D.
Date 11/25/27

November 12, 1927.

Honorable Howard Sutherland,
Alien Property Custodian,
Washington, D. C.

Sir:

We are transmitting herewith in duplicate notice of claim of John S. Sorenson and Thorleif S. B. Nielsen as

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surviving partners of the firm of Crossman & Sielcken, New York, N. Y., against the cash and other assets now in your possession seized as the property of the Zentral-Einkaufsgessellschaft, m. b. H.

Will you kindly send us a formal notice acknowledging the receipt and filing of this notice and claim.

Respectfully,

RSD:G R. S. DOYLE

A. P. C.

467 Claim Section
Received Nov 12, 1927
Referred to .....
Answered .....
Date .....
No. .....

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Exhibit S Annexed to Affidavit of Frank C. Sterck. 469

Letter dated November 21, 1929 to W. H. Pettry, Claims Division, Alien Property Custodian's Office, from Hamel & Doyle, stating that Mr. Hamel and Mr. Doyle are associated with Messrs. Barnes, Avery & Whiting in the prosecution of Claims 38566 and 38530.

LAW OFFICES OF
HAMEL & DOYLE
Southern Building
Fifteenth and H Streets 470
WASHINGTON, D. C.
Telephone Metropolitan 4351

Charles D. Hamel
Richard S. Doyle
Lee I. Park
Benjamin H. Saunders
John Enrietto

Cl 38566

Lloyd Anderson

November 21, 1929. 471

Re: Claim Nos. 38566 and 38530

Mr. W. H. Pettry,
Claims Division,
Alien Property Custodian's Office,
Washington, D. C.

Dear Sir:

We beg to acknowledge receipt of your letter of the 15th and to advise you that Mr. Hamel and Mr. Doyle of this firm are associated with Messrs. Barnes, Avery & Whiting in the prosecution of both of these claims.

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This case will be reached for trial in the Southern District of New York, the first week December. These two claims cover the same subject matter, and we would prefer to delay taking any action on either claim until after decision of the court.

Very truly yours,

HAMEL & DOYLE.

RSD:G

A. P. C
Claim Section
Received Nov. 22, 1929
Referred to .....
Answered .....
Date .....
No. .....

Alien Property Custodian
Received Nov. 22, 1929
Noted W. H. P. Date 12/17/29
Ans'd ..... Date ———

473 Taken care of by letter W E. O.

474

Exhibit T Annexed to Affidavit of Frank C. Sterck. 475

Testimony of Brainard S. Avery taken in January of 1935 before Referee Seligsberg.

SURROGATE'S COURT,

NEW YORK COUNTY.

IN THE MATTER

of

The Estate of Hermann Sielcken, Deceased. 476

Before: Walter N. Seligsberg, Esq., Referee.

Vol. 4, pp. 1191-1649

1572

MATTER OF HERMANN SIELCKEN, continued.

477

43 Exchange Place,
New York, N. Y.,
January 11, 1935;
10:30 A. M.

Before: Walter N. Seligsberg, Esq., Referee.

Present:

Howard Hasbrouck, Esq.,
Brainard Avery, Esq.,
Albert Avery, Esq.,
Selden Bacon, Esq.,
David S. Hecht, Esq.,
Robert H. Wrubel, Esq.

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P. 1603 BRAINARD AVERY, called as a witness on behalf of the petitioner, being first duly sworn by the Referee, testified as follows:

Direct Examination by Mr. Hasbrouck:

Q. Mr. Avery, where do you reside? A. 44 West 44th Street, New York City.

Q. What is your occupation or profession? A. Lawyer.

P. 1604 479 Q. Do you recall when you were admitted to the bar? A. 1895.

Q. You are a lawyer and have been a lawyer practicing in the State of New York? A. Yes.

Q. Are you a member of any firm now? If so, what? A. Avery & Whiting, 100 Broadway.

Q. Were you a member of any firm in 1927? A. Yes, Barnes, Avery & Whiting.

Q. When, for the first time, was the Estate of Hermann Sielcken or its affairs called to your attention? A. 1927.

Q. Where, and by whom? A. By Mr. Alex Sielcken, in my office.

480

• • • • • •

Q. You had a conversation with Mr. Alex Sielcken? A. Yes.

Q. When? A. For the first time, when the estate was mentioned, early in 1927.

Q. Can you be more specific in that; can you give us the month? A. February.

Q. Had you prior to that time had anything
P. 1605 whatever to do with the estate of Hermann Sielcken? A. No.

Q. Did you know anything about its affairs? A. No.

Q. Can you tell us how long this conversation lasted? A. My recollection is, Mr. Sielcken referred to the loss of some meat cargoes.

• • • • • •

P. 1608 By Mr. Hasbrouck:

Q. After this first conversation with Mr.
P. 1609 Sielcken, did he bring you any paper? A. Yes.

Q. What were they? A. I can identify now a copy of the newspaper report of the Prize Court decision in London with some letters.

* * * * * *

P. 1609 Q. What did you do after the receipt of those papers, in so far as your actions pertained to the estate of Hermann Sielcken? A. I visited
P. 1610 the Department of State in Washington. 482

Q. Do you recall when you went there? A. Around the 1st of March, 1927.

Q. Whom did you see? A. I saw the man in charge of claims presented by the United States against Great Britain, and also called at the office of the American Agent in the Mixed Claims Commission, United States and Germany.

* * * * * *

P. 1612 Q. Do you recall the time of your second visit? 483
A. Yes.

Q. When was that? A. March, 1927.

Q. Can you be more precise in the date? A. No; I was visiting Washington weekly then
P. 1613 and called at the Mixed Claims Commission about other matters and brought up the subject of the Copenhagen cargoes again, and returned to New York and had an interview with Mr. Sielcken.

Q. Did you have any interviews with anyone else at about this time? A. Yes, I went to Boston.

Q. Whom did you see over there? A. Frank H. Stewart.

Q. Who is Mr. Frank H. Stewart? A. A lawyer of the firm of Stewart & Chase.

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Q. What was your purpose in going over there? A. To talk with him about the claim presented against Great Britain by the United States on account of what was called the shipments of fat backs, later known as Copenhagen cargoes. Mr. Stewart produced his files, and I spent a day in his office examining the papers.

Q. About what did those files relate? A. To the claim presented by the United States to
485 the British Government.

The Referee: That is, the claim on behalf of the executor?

The Witness: Yes.

P. 1613 The Referee: In which Mr. Stewart represented the executor?

The Witness: Yes.

Q. Did you have any conferences with Mr. Sorenson at about this time? A. To the best
P. 1614 of my recollection, my meeting with Mr. Sorenson was in April, and after my second visit to Boston to see Mr. Stewart.

486 Q. Were any papers relating to the Sielcken estate given to you by Mr. Sorenson? A. Not at that time, as I recall; later, yes. I would like to add, before I went to Boston I made two visits to the Department of Justice in Washington and received two visits from officials of the Department at my office in New York.

* * * * * *

P.1618 Q. At about this time did you have any conversations with Mr. Judd?

* * * * * *

A. Yes.

Q. Can you tell us when they were? A. They began in April, after my return from Boston.

Q. Can you tell us approximately how many conversations you had with him prior to the time when your firm was retained by Mrs. Sielcken on May 10, 1927? A. Not to exceed three or four.

Q. Where did they take place? A. At the office of the Columbia Trust Company, 60 Broadway.

Q. Was it in 65 Broadway? A. 60 Broad- 488
way.

Q. Tell us what those conversations were, in substance. A. Mr. Sielcken took me to Mr.
P. 1619 Judd and introduced me. I participated in telling Mr. Judd what inquiries had been made at the first interview. He was to see what files were available upon the subject of
P. 1619 the Copenhagen cargoes. I later saw Mr. Judd and he introduced me to Mr. Major. They had some papers together, which were added to. I went again with Mr. Castell of my office and examined all the papers they thought were relevant. I can think of nothing Mr. Judd said, 489
except to get the files together. He listened attentively, and I can recall no questions that were asked Mr. Judd by me.

Q. What office, if any, did Mr. Judd hold in the Trust Company? A. At that time he was trust officer, and, I think, Vice-President.

Q. What office, if any, did Mr. Major hold in the Trust Company? A. Mr. Judd's assistant.

Q. At this time did you tell either one, or both of these gentlemen, the substance of the conversations which you had had previously with the gentlemen to whom you spoke in Washington, and also with Mr. Sorenson and Mr. Nielsen? A. The substance was told Mr. Judd

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but I think I did not go into detail, there were so many uncertainties and apparent inconsistencies of fact between the records in Washington and the records in Boston. I recall my first call to Mr. Judd was that it was a theory that

P. 1620 Mrs. Sielcken wanted investigated. Mr. Judd concurred in assisting in the investigation.

Q. A theory relating to what, Mr. Avery? A. Relating to the real buyer or owner of the seized Copenhagen cargoes.

491 Q. Do you recall whether anything was said at that time about the Wille account? A. That is too early.

Q. Nothing was said then? A. No.

Q. Do you recall whether, during this preliminary period, you had any conversations with Mr. Warren? A. Yes.

P. 1620 Q. Where did they take place? A. At the office of the Chase National Bank, directly across the street from Mr. Judd's office—directly across Broadway from Mr. Judd's office.

Q. Mr. Warren was then an officer of the Chase Bank, was he not? A. Vice-President.

492 Q. Had he previously been an officer of the Irving Trust Company? A. He said he had been.

. . . . . .

P. 1621 Q. Do you recall, Mr. Avery, anything else which you did in connection with the affairs of the Sielcken estate prior to the time when your firm was formally retained on May 10, 1927, by Mrs. Sielcken? A. Mr. Judd sent me to Mr. Warren. He made the appointment on the telephone and waved across Broadway from Mr. Judd's window to Mr. Warren's

window. I had conversations with Mr. Warren, who said he had been in charge generally of the estate—

. . . . . .

P. 1622 Q. Mr. Avery, what did Mr. Judd say to you with respect to your going to interview Mr. Warren? A. Mr. Judd stated that during the active part of the administration of the Sielcken estate Mr. Warren had general charge; 494 that he, Mr. Judd, knew about the estate but did not know the details; that Mr. Judd was unable to give me information which I was seeking; that he felt sure that Mr. Warren would have many more facts than Mr. Judd had, and if I would call at Mr. Warren's office immediately he would call him on the telephone and arrange for me to go over. He did so and I called on Mr. Warren.

Q. Now, can you fix the time and place of your first conversation with Mr. Warren? A. About the middle of April, 1927.

P. 1622 Q. Where? A. At Mr. Warren's office in the 495 Chase Bank.

Q. Please tell us the conversation that then took place.

. . . . . .

P. 1623 A. I told Mr. Warren that I had found that the Reichs Einkaufs-Gesellschaft and Z.E.G. were identical; that I believed the purchaser of the seized cargoes was the Central Purchasing Agency.

Mr. Bacon: The Z. E. G.?

The Witness: Yes, Z. E. G.

A. (continued) But there was an inconsistency about the claims in the State Department.

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I told him that the claims had been presented by the American Government against Great Britain for the entire cargoes, whereas Mr. Sorenson had told me, and Mr. Sielcken had told me, from the books of Crossman & Sielcken in New York—

• • • • • •

A. (continued) And Alex Sielcken, had shown
497 me that one-half of these cargoes was in the joint account and owned by Wille of Hamburg, a British enemy. I asked Mr. Warren if he could explain the discrepancy between the
P. 1624 ownership being alleged by the American Government as entirely in Crossman & Sielcken, whereas the books showed that one-half of the cargoes were owned by a German enemy. I told Mr. Warren that theoretically, if Great Britain paid for the cargoes, that one-half of that recovery must, on the face of things, be remitted to Wille, a German enemy; that I had been informed in Washington that theoreti-
498 cally it was an international crime. He said he was surprised; that what had been done in Boston had been done on the recommendation of one of the former employees of Crossman & Sielcken; that he knew nothing about that phase of it except—

Mr. Bacon: You mean you told Warren this:

The Witness: Warren told me that he knew nothing about this phase of the claim, except that such a claim was being made; that he had inquired as to the standing and reputation of the Boston lawyers and found they were of the highest. I recall no definite facts given me from Mr. Warren that were anything except promises of assistance, and an invitation to report to him how I was getting along, and should ask him for any information.

Q. Do you recall whether you had any other conversations with Mr. Warren prior to the
P. 1625 time when your firm was retained by Mrs. Sielcken? A. I saw Mr. Warren more than once. I inquired about the official standing of Mr. Sorenson and Mr. Nielsen, about the liquidation, who were the parties in interest. Mr. Judd furnished me with copies of the partnership agreement. I discussed it with Mr. Warren. My discussions with Mr. Warren and Mr. Judd, who were physically so close together—100 feet 500
apart—related in the first instance as to the identity, the legal status of the claimant, if there was a claim.

Q. Would it be correct, Mr. Avery, for me to say that your activities with relation to the Sielcken estate during this preliminary period, prior to the retainer of your firm, were those of investigation and conference to ascertain what you could do primarily with reference to the seized cargoes? A. Yes; for Mrs. Sielcken, not for the executor.

Q. Your firm was formally retained on May 10, 1927, was it not? A. Yes. 501

* * * * * *

Q. By Mrs. Sielcken? A. Yes.

Q. Will you please tell us what you or your firm did first after you received your retainer? A. Just prior to the retainer being arranged, I called on Mr. Judd and told him that Mrs.
P. 1626 Sielcken had no status before the Mixed Claims Commission; that the information and the assistance being given me at the Commission was personal, and that I should have the authority of the executor to make inquiry on its behalf. Mr. Judd asked me if I wanted a formal letter authorizing me, and I told him that the matter

had not proceeded to that point, except I wanted him to know that I would make my inquiries and do my work from that point on on behalf of the executor.

He inquired about the charge for the services, and I told him that that had been arranged by Mrs. Sielcken, and that she or Alex Sielcken would take it up with him. Mr. Judd said that it was agreeable to him.

Also, before the retainer Alex Sielcken had
503 brought or had caused to be brought from various sources documents and papers. Mr. Stewart's files had been forwarded from Boston to the Irving executor, and had been sent intact, I think, without the package being opened, by Mr. Judd to me. Numerous papers and documents were coming from, I think they told me, Mr. Sorenson or from Crossman & Sielcken's files. The executor's files were almost bare on this subject. They nearly all came from Boston.

Mr. Sielcken showed me some papers that he said he had gotten from Mr. Smith. By the
504 time of the retainer I was able to advise Mrs.
P. 1627 Sielcken that claims could be made by the Sielcken estate against Germany on three items. The first item was the Copenhagen cargoes; the second item was the claim of Crossman & Sielcken, a citizen of the United States, against Theodor Wille, a citizen of Germany; and the third claim was what was called the Mark depreciation claim, where the loss must be sustained by an American citizen through what was called the German Exceptional War Legislation. This situation was laid before Mrs. Sielcken and Mr. Alex Sielcken, discussed with Mr. Judd and Mr. Warren; also with Mr. Sorenson and Mr. Nielsen, and the retainer was arranged early in May, 1927.

I inquired if anyone had examined the files of Mr. Hermann Sielcken in Baden-Baden.

Mr. Bacon: Whom did you ask that?

The Witness: Mrs. Sielcken, Mr. Alex Sielcken, Mr. Stewart, and, I believe I asked that question of Mr. Neilsen. Mr. Nielsen told me he had been in Germany following the seizures.

. . . . . .

P. 1628 A. (continued) Mrs. Sielcken informed me 506
that no one had opened the files of Mr. Sielcken since his death, October 8, 1917. I explained to Mrs. Sielcken and to Alex and to Mr. Judd that it was important, in my opinion, to examine these papers to find either corroborating evidence or information which would assist us in the claims. I arranged with Mrs. Sielcken to send Mr. Castell, who works in the German language, immediately to Hamburg and Baden.

Q. Who is Mr. Castell? A. At that time he was a junior partner in Barnes, Avery & Whiting. 507

Q. Did Mr. Castell go to Germany? A. He went to Germany later, in May, 1927.

Q. The latter part of May? A. Yes.

Q. How long did he remain over there? A. Until the end of September, 1927.

Q. Will you proceed with the recital of what you did after the retainer was made? A. I spent much time in endeavoring to connect Levin and Beckmann and Jorgensen of Copenhagen as agents of the Z. E. G. in the C. & S. shipments. I had made inquiry in Washington and had found $880,000 on deposit in the United States Treasury belonging to Z. E. G. If Z. E. G. was the buyer of these Crossman & Sielcken cargoes, I advised Mrs. Sielcken and

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Mr. Judd that we might get that money. Mrs.
P. 1629 Sielcken and Alex sailed in May, 1927. Mr. Castell was in Baden-Baden and Hamburg, and I went to Germany in August.

Q. 1927? A. 1927; working with Mr. Castell.

Q. Mr. Avery, let me interrupt your trend of thought just a moment, if I may. During the period from the execution of the retainer until you sailed in August of 1927, and while you
509 were in this country, were you engaged generally in investigating the facts relative to these claims that you have mentioned? A. Yes, sir.

Q. Now, you sailed in August, did you? A. Yes.

Q. And where did you go? A. Hamburg and Berlin.

Q. Will you please pick up your narrative from the time of your arrival in Germany, and tell us what you did from then on? A. On arrival at the Hotel Atlantic in Hamburg, I found Mr. Castell with his room literally, almost full of papers, with a stenographer and
510 translator. He was engaged in sorting out papers he thought might be relevant, and the papers which he selected, as I had not worked in German, I made a selection from and brought them to New York with me. Mr. Sielcken was there helping.

Q. Mr. Avery, may I interrupt the thread of your narrative and take you back prior to the time when the retainer was entered into? Did
P. 1630 you have a conversation with Mr. Judd and, if so, when and where, at which you told him the substance of a conversation you had previously had with a Mr. Osann? A. Yes.

Q. Where did that conversation take place, and when? A. In my office.

Q. Can you fix the date? A. Between the 1st and 7th of April, 1927.

Q. What was said at that time? A. I called Mr. Judd's attention to the decision of the Prize Court, which was in printed form, which referred to the Reichs Einkaufs-Gesellschaft, to Crossman & Sielcken, to the jewelers, Beckmann & Jorgensen, who suddenly became one of the largest food concerns in the world in 1914, to Harry Levin, who was an auditor in Hamburg, who blossomed into a merchant on a large scale in Copenhagen; that I had applied to the Department of State about information 512
concerning the Reichs Einkauf and had been informed that that had been a temporary agency, and it was believed had been succeeded by the Central Purchasing Agency, Z. E. G.; that I had pursued my inquiries at the Department of Justice and had been informed by Captain Offley that my inquiries would have immediate attention, but that he would send me, in the course of a day or two, Colonel H. E. Osann. This was all told to Mr. Judd, which he said was a very interesting story. Colonel Osann had been placed in charge by the American Government of enemy activities and un- 513
P. 1631 neutral activities. He would give me the information, if available in the United States, and, if not, he would try and get it from Germany. Osann had gone to Germany.

* * * * * *

A. (continued) That he enlisted in the German army, had become a Colonel attached to the General Headquarters at Aix; as Mr. Osann he sent his dispatches from the working desk of the Kaiser, his wife and family receiving checks from the American Government.

Mr. Bacon: You mean he was in the German army?

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The Witness: He was in the German army, Oberhauptmann in the German army.

P. 1631 A. (continued) Osann came from Omaha to see me perhaps, among others; he was here a day or two. Captain Offley admitted the matter was of great importance. Osann said he would have to return to Washington to get his files, as they related entirely to Von Papen's activities in the United States beginning in the fall of 1914. He did so, and two days later came to
515 my office and gave me the working chart of the Reichs Einkauf—Zentral Einkaufs-Gesellschaft, and the substance of information which
P. 1632 was later checked, and not substantially changed, with the exception of the operation of the Danish Food Control, which came out later in the year.

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A. (continued) Mr. Judd had expressed his doubts. He said he doubted the wisdom of Mrs. Sielcken making any investigation and spending
516 any money; that the executor had no money, and that, while the executor wished to cooperate in every way, he must make it clear there will be no liability. He said that they would cooperate in every way to let us have the information available. This was a conversation which was arranged early between Mr. Judd and my firm, Barnes, Avery & Whiting, to accept the retainer from Mrs. Sielcken to represent the claims of the estate on account of the seized cargoes.

Q. Now, Mr. Avery, will you pass from that interpolation to the point where you were in Germany in the late summer or early autum of 1927 with Mr. Castell, and proceed with your narrative?

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P. 1633 A. After the discovery of the $800,000-odd of Z. E. G. money in Washington, I devoted my attention largely to the Wille account, which at that time divided itself into four items: First the Prado account; second, the open account of Wille; the third item, and a very important one, we call the million-dollar cable transfer of 1916; and the fourth item of the claim, as then divided, was the Mark depreciation because of Crossman & Sielcken's heavy Mark balance in Germany which Mr. Sielcken, because of war, 518
his illness and death, was unable to remove within the six-months' period which American citizens had to remove their property from Germany following the declaration of war, and which expired October 6, 1917, two days before Mr. Sielcken died. That treaty was not with Germany; it was with the Kingdom of Prussia.

Mr. Bacon: It was adopted by the German Reich after 1871. I think the Court takes judicial notice of that.

A. (continued) The work in Germany was largely devoted to the Wille account, as the 519
Copenhagen cargoes had been pretty well cared
P. 1634 for before I left New York. Mr. Castell and myself returned to New York at the end of September, 1927, and I then had several conferences with Mr. Judd as to the progress that had been made. Mr. Sorenson was on the job daily. I saw Mr. Warren from time to time. It would be difficult to repeat the various conversations as they followed the matter very closely as it developed.

Q. Did you, upon your return, or did the members of your firm, start the preparation of memorials? A. Yes.

Q. When were they prepared and filed, do you recall? A. The memorials were skeletonized

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before I went to Germany in August. I asked Mr. Sorenson to assist in getting the proofs ready, as the American Agent said that these claims could now be revived, as he called it, and, as no proofs had previously been filed, he would prefer to examine the proofs in advance of the filing of the memorials.

Mr. Bacon: Who was this, Mr. Bonynge or Mr. Martin?

The Witness: Both, but particularly Mr. Martin. At the end of October, 1927, the proofs were fairly in order. There was much accounting work to be done, many files and books to be examined, and any evidence that might exist that would protect the claims.

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Q. Can you tell us approximately how long your firm was engaged in the preparation of these papers in support of the claims?

P. 1635

Mr. Bacon: You mean these preliminary proofs?

A. Except Mr. Castell, I think no one in our office was engaged, but I became so much interested in it that I worked steadily all the time until the memorials had been filed with the proofs and the suit had been started against the Alien Property Custodian.

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P. 1636

The Witness: Mr. Castell and myself were exclusively engaged from April until December, 1927, in the preparation of the proofs, the memorials and the Federal suit. The remainder of the office was not much involved.

Q. Do you recall, Mr. Avery, when the memorials were filed in Washington? A. November, 1927.

Q. Late November, was it not? A. Late November, 1927.

Q. Do you recall whether the proofs in support of the claims of which you have spoken were filed at the same time? A. They were filed at the same time, but were in the possession of the American Agent some days before the filing and were examined by him.

P. 1637

Mr. Bacon: Who is the American Agent; to whom do you refer?

The Witness: Mr. Bonynge, but particularly Mr. Martin. They had assistants down there. 524

Mr. Bacon: I suppose we can stipulate that Mr. Martin was counsel for Mr. Bonynge, the American Agent.

Mr. Hasbrouck: I understand that is the fact.

The Witness: Yes.

Mr. Bacon: H. H. Martin?

Mr. Hasbrouck: Yes; H. H. Martin.

Q. Was a suit commenced also in December, 1927, in the United States District Court against the Alien Property Custodian, the United States Treasurer and Z. E. G.? A. Yes. 525

Mr. Bacon: By whom, and when were the summons and complaint in that action prepared?

The Witness: Mr. Barnes and myself were the solicitors of record, and the suit was started in the United States Federal Court, Eastern District, and discontinued and again started in the Southern District.

Q. While you were engaged in the preparation of these papers in support of the memorials, were you also engaged in gathering together data for this suit, and in preparing the summons and complaint? A. Yes.

P. 1638

Q. Now, Mr. Avery, you have the memorials on file and the suit commenced in the Federal

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Court. Will you tell us what you did next? A. I went to Washington.

Q. Can you tell us when you went? A. January, 1928.

Q. Whom did you see and what did you do? A. I was called to Washington to have a meeting with the German Agent, Dr. Von Lewinski.

Q. What transpired at that time at your meeting with him? A. Dr. Von Lewinski expressed his dissatisfaction at the allegations of fraud in connection with the million-dollar cable transfer of 1916, and stated that he wanted to discuss the situation, as it was very clear to his mind that there was no basis whatever for my statements. We had that discussion. I told him then that the charge would be withdrawn, or, at least, that the executor would consider the withdrawing of the charge if he would produce proofs that the German War Bonds had been bought in Germany, which he promised to get.

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Q. By "German War Bonds," you mean war bonds which were to be purchased with this cable remittance of $1,000,000? A. Yes.

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Q. Will you proceed, please? A. That is what

P. 1639

I did next. The next after that, I think I was in communication with Mr. Martin, having other cases in Washington, and may have called at the Commission, and probably did. Mr. Martin stated that the German Government would like to have me go to Berlin.

Q. At that time had a motion been made to dismiss the memorials? A. Yes.

Q. Will you please tell us about that? A. The motion had been made to dismiss the memorials on the ground of lack of jurisdiction of the Mixed Claims Commission, and we were asked to assist in resisting the motion.

Q. What did you do in the way of resisting the motion; were briefs prepared? A. There

were several conferences, and Mr. Whiting and Judge Hamel's office in Washington, who assisted me down there in the matter, prepared briefs.

Q. Those briefs were submitted, were they? A. They were submitted in due course; the date, I do not know.

Q. Do you know how many briefs were prepared? A. Two.

Q. You cannot tell us exactly when they were submitted? A. I cannot give you the exact date 530
offhand.

Q. What did you do after having this talk with Dr. Von Lewinski to which you have referred? A. There was constant office work with my own people. Mr. Sorenson was the most
P. 1640 active man outside of the office in hunting for material, or to find the material that did not exist, particularly in getting information about this million-dollar cable transfer, which was the first rock that somebody's boat hit, and then there was a conference with Mr. Bonynge and he stated it was the first time an attorney for an American claimant had been invited to go 531
to Berlin in connection with a claim. He said he thought I ought to go.

Q. Had Dr. Von Lewinski asked you to meet him in Berlin? A. No; he or some of his staff had conveyed that information to the American Agent.

Q. Now, have you told us all that occurs to you which you did prior to your sailing for Europe in the spring of 1928? A. Well, it was the substance, looking over the books and papers relating to the cargoes and the Wille account of Crossman & Sielcken, and limited only to that.

"Q. Did you act on the suggestion transmitted to you by Dr. Von Lewinski, and, if so,

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what did you do and where did you go? A. I am not sure the invitation came from Dr. Von Lewinski; I believe it was cabled from Berlin. I accompanied Mrs. Sielcken to Germany, leaving the end of February, 1928. She went to her place in Holstein, and I went on to Berlin.

Mr. Bacon: When did you say that was?

P. 1641 The Witness: February, 1928.

Q. Might it not have been early in March, 1928? A. I arrived in Germany early in March,

533 1928.

Q. What did you do upon your arrival and while you were there? A. I conferred with Frederick Wirth, an American lawyer residing in Berlin. We prepared for the meetings at the Foreign Office, which began a few days after my arrival, and continued substantially three days a week for almost two months.

Q. Who was Mr. Wirth? A. An American lawyer, formerly from New York.

Q. And he had been an assistant to Mr. Bacon; is that correct?

534 Mr. Bacon: He had been a clerk in the office of Sackett, Bacon & McQuaid.

Q. Will you proceed with your narrative?

* * * * * *

A. (continued) The meetings began at the Foreign Office, in both German and English, very slow, and continued until results began to be realized at the end of April.

P. 1642 Mr. Bacon: Which year is this?

The Witness: 1928.

Q. Do you recall when you left Berlin? A. Yes, I left Berlin April 30, 1928.

Q. Where did you go? A. Paris.

Q. How long were you in Paris, do you remember? A. Three weeks.

Q. Where did you go then? A. New York.

Q. When did you arrive here? A. The end of May, 1928.

Q. Was anything said while you were carrying on these negotiations in Germany as to the possibility of adjusting these matters until there had been a determination in the United States District Court of the question who had as- 536
sumed the risk of seizure at sea of the cargoes in question? A. Yes.

Q. What was said and done about that? A. The German delegation—Dr. Hugo Israel and Dr. Von Lewinski were spokesmen—stating that if an agreement for adjustment could be reached, could it not be made effective at once. They stated that they were willing that a default judgment should be entered against Z. E. G. in the New York suit; that they had ascertained by cable that such default judgment would be binding upon the A. P. C. in the con-
P. 1643 dition in which the litigation was. The question 537
then arose whether it would be lawful or proper to make such an arrangement in Germany on money in possession of the United States, although it was a stakeholder, under the Treaty of Berlin of 1921, of this money, unless the consent of the United States, with knowledge about all the facts, were obtained in advance.

The situation had been complicated by the fact that Congress had, in the spring of 1927, adopted a law, or passed a law or an amendment devoting this $800,000 to the American holders of German bonds payable in dollars. One of the questions in issue at our Berlin meetings was how the settlement could be put

through if it were reached. The Germans insisted upon dropping off from the claims the settlements which they claimed Mrs. Sielcken was bound to, which had been made in Germany. That involved substantially a half-million dollars. They took a short-cut through the estate, through the residuary legatee, Mrs. Sielcken, assuming that the executor would follow her directions in that respect.

Another one of the most mooted questions

539 was—

Mr. Bacon: I ask to have that made a little more clear, Mr. Avery. You said they took a short-cut. You mean they did it this time or they did it some other time?

The Witness: For the purpose of this dis-

P. 1644 cussion, shall I say, expected to represent and bind Mrs. Sielcken? As I made no agreement in Germany on behalf of the estate, I had no power of authority or letter of attorney from the executor, but as she was the residuary legatee it was expected the formalities would be completed to effectuate the settlement in

540 New York. That was stated. There was a question as to whether or not the authority of the executor should not be sought by cable. It was then stated by me that the situation was so complicated that I preferred not to even ask for it.

The other mooted question was: At whose risk these goods were afloat at the time of the Declaration of London was violated and they were seized.

. . . . . .

Q. Do you wish, Mr. Avery, in the answers which you have just given, to change any of the phraseology, now that the last answer has been read to you? A. I inadvertently used the

word "settlements" made by Mrs. Sielcken or by the German executors. I think a more accurate word would be "adjustment."

Q. Now, will you tell us again when you arrived in New York? A. Just before May 30, 1928.

Q. What did you do or what did any member
P. 1645 of your firm do after your return here? A. Very shortly after, I became very ill, and, except for routine matters, these matters were held in abeyance until I resumed in September, 542
1928.

* * * * * *

Q. Now, when were the German answers filed to the memorials, if you recall? A. The autumn or early winter—later that year, I think.

Q. What did you do, as far as you remember, or what did your firm do after your return and your recovery from your illness, until the end of that year, 1928? Perhaps I can refresh your recollection. Were briefs in support of the claims prepared? A. Yes; there was a main 543
brief and supplemental brief, which were not prepared by me, although I worked on them. We were also endeavoring to perfect our proofs.

Q. One of those briefs was filed towards the end of 1928, was it not? A. I believe so.

Q. And the other early in 1929? A. Yes.

Q. Now, what did you do beginning with 1929? A. Matters were followed up by me in Washington with the American Agent. I had reported to him the tentative agreement of settlement made with the Germans. I was reminded that the political condition in Germany
P. 1646 might change and there would be a new administration there, and the agreement for settlement might not be carried out, assuming we

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succeeded in the litigation with regard to the cargoes. Mr. Martin, in Washington, suggested that I make the effort to get a direct statement from Copenhagen as to the agency, particularly of Harry Levin, and otherwise perfect the proof.

Q. You mentioned just now a tentative agreement. Are you referring to the arrangement which you made when you were in Europe in the spring of 1928? A. Yes.

545 Q. Now, did you go to Europe again in the spring of 1929? A. Yes.

Q. When did you leave? A. June, 1929.

Q. Where did you go upon your arrival? A. On this matter I went from Stockholm to Copenhagen, to Hamburg and Berlin.

Q. What did you do while you were there? A. I made an effort in Copenhagen to locate Mrs. Harry Levin. I called on Beckmann & Jorgensen. Mrs. Levin had disappeared into Germany. I did not have the password from Germany loosening up Beckmann & Jorgensen. I went on to Hamburg and then again to Ber-

546 lin on the same matter. I had further discussions in Berlin.

Q. When did you leave to return to America, if you recall? A. I arrived in New York the end of August, 1929.

P. 1647 Q. Had the case in the United States District Court been reached for trial yet? A. No.

Q. But it was on the calendar, was it not? A. Yes.

Q. What did you do after your return, to which you have just referred? A. I went to Washington, to the Department of Justice.

Q. What did you do there? A. I endeavored to arrange to have the Attorney-General concur in a default judgment against Z. E. G., which would result in the A. P. C. and the

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Treasurer of the United States paying over the entire Z. E. G. item, Unknown Enemy No. 1, to us.

Mr. Bacon: That Unknown Enemy No. 1 was Z. E. G., was it not?

The Witness: Z. E. G. was reported to Congress for years; the item had been Unknown Enemy No. 1. The identity of that Z. E. G. had been established sometime prior.

Q. And the balance credited to Unknown Enemy No. 1 had been attached in the suit in 548
the District Court, had it not? A. It had been decided that the notice served under the Trading with the Enemy Act was the equivalent either to a formal attachment, assuming we could have gotten any officer to attach it, or a mandamus, which was considered, against the Treasurer of the United States to segregate the money.

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P. 1648 A. (continued) I can illustrate that a little bit. The executor served notice upon the A. P. 549
C. and the Treasurer that it claimed the Z. E. G. moneys in possession of the A. P. C., but the A. P. C. answer—the response of the A. P. C. was, "This money is not in my possession because it has been already appropriated by Congress."

There was then a close study given to the question of a mandamus proceeding directed against the A. P. C. and the Treasurer of the United States to segregate this money pending the decision of existing litigation, and anything else, and prevent its being paid over to the holders of the German bonds in America payable in dollars. I was told in Washington, at

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the Department of Justice, that I could not find a Deputy Marshal in the District that would attach the money.

Q. Have you told us all you did in Washington, as far as you recall, at that time? A. Only a part of what had been done, and I am trying to sketch it.

Q. I do not want details, Mr. Avery. A. I went to the Department of Justice on several occasions and had long discussions with the As-

551 P. 1649 sistant Attorney General, Rhoads, in an effort to have him acquiesce in permitting judgment to go against Z. E. G. and letting the settlement go through. An opinion was written by the Attorney General upon the subject that as the United States was only a stakeholder in this, that it must be done by judicial determination. The Department assisted us in bringing the matter on before Judge Knox, with the concurrence of Z. E. G., so that the trial actually occurred before Judge Caffey in December, 1929.

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(Whereupon, at 4:40 P. M., an adjournment was taken to Tuesday, January 15, 1935, at 10:30 A. M.)

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P. 1650 Matter of Hermann Sielcken, continued.

43 Exchange Place,
New York, N. Y.,
January 15, 1935;
10:30 A. M.

Before:

Walter N. Seligsberg, Esq., Referee.

Present: 554

Howard Hasbrouck, Esq.,
Brainard Avery, Esq.,
Albert Avery, Esq.,
Selden Bacon, Esq.,
David S. Hecht, Esq.,
Robert W. Wrubel, Esq.

BRAINARD AVERY resumed.

Direct Examination (continued) by Mr. Hasbrouck:

Q. Mr. Avery, at the last hearing you testified that you had had a conversation or conversations with officials of the State Department in Washington. Subsequent to the time when you had those conversations, did you speak to anyone or any officer of the Trust Company with reference to them? A. Yes, Mr. Judd. 555

Q. Do you recall when and where it was? A. In the spring of 1927 there were several conversations between me and Mr. Judd, gen-
P. 1651 erally at his desk at the Irving Trust, 60 Broadway. On occasion he stopped at my office to inquire if there was anything new.

Q. Will you tell us, please, what you said to Mr. Judd with reference to the conversations which you had in Washington, and to which I have referred?

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Mr. Bacon: Can you fix the date of this a little more accurately?

Mr. Hasbrouck: I will put this question, then.

Q. Can you tell us approximately when you had your conversation with Mr. Judd, at which you referred to your prior conversations with the officials in Washington? A. Only generally, beginning in March and continuing through to the time that I sailed for Germany in August, 1927.

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Q. To the best of your recollection, was it shortly after you had had your conversations in Washington that you spoke to Mr. Judd about them? A. Mr. Judd asked me to keep him informed. He had not then determined that the claims should be filed. The matter was under investigation. Mr. Judd asked me for advice from time to time, and I reported the substance of what we were finding. Mr. Judd had given directions to—

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P. 1652 Q. Mr. Avery, state what you said to Mr. Judd with reference to the conversations you previously had had in Washington. A. It is difficult, your Honor, to answer that question, unless I go into detail.

The Referee: Mr. Avery, you had one or two or three interviews in Washington with various people in the State Department. You were asked last week what happened then and were not allowed to testify. Then it later appeared in the evidence that you told Mr. Judd what had happened, and I do not see why you cannot tell us, as far as you remember, what you told Mr. Judd.

The Witness: To the best of my recollection, in that period I saw Mr. Judd as many

as thirty times and probably telephoned him sixty times. I told Mr. Judd of the situation of the memorials of 1922, which had been withdrawn by the estate in 1924; that the executor filed no proofs in support of the memorials; that the theory upon which they were drawn had not met with the approval of the American Agent, particularly the loss of the cargoes was not
P. 1653 approximately caused by Germany's submarine warfare; that the American Agent had stated it had been disallowed in the British 560
Mixed Claims Commission; that the American Agent had said he would entertain a reconsideration of any claims of the American partnership of Crossman & Sielcken. I asked Mr. Judd about Mr. Sielcken's status, that I had heard in Washington that Mr. Sielcken had repatriated himself in Germany, that it was important to have any proof or knowledge that could be gotten in New York in regard to it. I discussed with Mr. Judd the situation of the Boston lawyer, Mr. Stewart. Mr. Judd more than once stated that the estate did not wish to incur any expense. He asked me, 561
if I was going to see Mr. Stewart, to make sure there was no claim for services against the executor by Mr. Stewart. I said I preferred not to raise that question and that it was not part of my work, and he said that it would be all right not to raise it.

I saw Mr. Judd after my return from Boston. I told him that—

Q. Mr. Avery, may I interrupt you? I am not asking about that phase of your conversation with Mr. Judd, because that has been covered. I merely wanted to bring out your conversation with the officials in Washington,
P. 1654 in so far as you repeated it to Mr. Judd.
A. They are all bound up together. I went

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from New York to Boston and from New York to Washington. I told Mr. Judd of the various bureaus. I am not certain that I gave Mr. Judd the names of the officials. I am very sure that I told Mr. Judd about Colonel Osann. Off the record.

(Discussion off the record.)

A. (Continued) I might add on the record, any understanding that I had in Washington in this matter was as attorney for the executor, a possible claimant.

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That was stated to Mr. Judd, and I obtained his authority before I went to the Commission. It was stated to me by Mr. Martin that I was there representing only the estate, that Mrs. Sielcken had no status.

The Referee: You say you stated that to Mr. Judd and he said you could represent the estate to that extent?

564 The Witness: Yes.

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P. 1655 The Witness: I recall I obtained Mr. Judd's authority before I could ask to see the papers and ask for the advice of counsel to the American Agent, and take up the time of the American Agent on the subject. It was on behalf of a particular possible claimant, Crossman & Sielcken in liquidation.

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Q. At the top of page 1619 of the minutes, there appears this part of your answer: "Mr.

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Sielcken took me to Mr. Judd and introduced me. I participated in telling Mr. Judd what
P. 1656 inquiries had been made at the first interview." Do you wish to clear up the second sentence which I have read, and will you please do so if that is your wish? A. I would like to add: "I participated in a conversation between Mr. Sielcken and Mr. Judd, and gave both gentlemen what few facts I had ascertained up to that time."

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Q. At the time of adjournment at the last session, you had brought your narrative down to the point where you had returned to this country from Europe very late in the summer of 1929, and you told us about your trips to Washington in an effort to secure the consent of the United States authorities to the entry of a default judgment against Z. E. G. Will you pick up your story at that point and proceed with it, telling us, first, if you will, about a trip that you and Mr. George W. Alger made to Europe in the Autumn of
P. 1657 that year? A. Arthur Garfield Hays served notice of the taking of a deposition of a Dr. Frisch.

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Mr. Bacon: Hadn't you better put on the record who Arthur Garfield Hays was?

A. (Continued) Mr. Hays, attorney of record in the suit pending in the United States Court, Southern District of New York, against the A. P. C., Treasurer of the United States, in which Z. E. G. was impleaded. He appeared after a lapse of many months.

The Referee: For whom?

The Witness: For Z. E. G. Mr. Hays at that time was absent at a murder trial at Gas-

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tonia, North Carolina, and the matter was handled by Mr. Abramson, his partner.

Mr. Bacon: Hays' assistant?

The Witness: His partner. It was arranged that the executor and claimant would be represented in taking the Frisch deposition in Berlin, with Mr. Abramson. Mr. Alger and I sailed on the "Aquitania" September 18th, stopping at London to examine the records of the Prize Court in the hearings on the seizures in 1915. From there we went to
569 Berlin, and Mr. Abramson appeared. The deposition of Dr. Frisch was taken.

P. 1658 The Referee: What was Mr. Alger's connection?

The Witness: Mr. Alger was trial counsel for the claimant in the case which was tried in December in the United States District Court, before Judge Caffey. Before Mr. Alger and I sailed, we had arranged with the Assistant Attorney-General in charge in Washington that the cargoes case could be brought on by agreement before some Federal Judge
570 who would be available, and very soon.

Dr. Frisch was at the very top of the organization for supplying food to the civilian population in Germany, and, as such, was a very high officer in both the Reichs Einkauf and Z. E. G.

Mr. Bacon: You mean supplying food during the war?

The Witness: During the war, beginning in 1914.

By Mr. Hasbrouck:

Q. Prior to the departure of yourself and Mr. Alger, had you considered the advisability of taking the testimony of Dr. Frisch on written interrogatories? A. Yes.

Q. What conclusion did you reach about that? A. I discussed the subject with my associate counsel, Mr. Alger, and Mr. Barnes; I discussed the subject with Mr. Judd. We decided it was not wise to cable fully to either
P. 1659 Mrs. Sielcken or Mr. Sielcken in Germany. Mr. Hays stated to me that he was informed that Dr. Frisch would testify that he had a personal arrangement with Mr. Sielcken that the risk of seizure was for the seller, Crossman & Sielcken, and that C. & S. guaranteed 572
the safe arrival of the goods at point of destination in a neutral Baltic port. Mr. Judd said there were no funds available, that he approved the taking of the testimony orally, but beyond giving his approval he would not express an opinion; he would give no direction.

Q. How long were you in Germany? A. Nearly two weeks, because Mr. Abramson missed the steamer he expected to sail on.

Q. The deposition of Dr. Frisch being taken, what did you then do? A. Returned to New York. 573

Q. Do you recall when you arrived here? A. October, 1929.

Q. Did you then, together with your associates, start the preparation for the trial of the case pending in the United States District Court? A. The case was well in hand before we went to Germany.

Q. You mean the preparation was well in hand? A. The preparation of the case was well in hand. I went to Washington with a copy of the Frisch deposition, and took it up
P. 1660 at the Department of Justice, and called their attention to the fact that the deposition was purely hearsay, that Dr. Frisch had heard that Mr. Sielcken's firm assumed the risk of seizure.

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Q. When did the case go on for trial? A. The week before Christmas, 1929.

Q. And was actually tried then? A. Yes.

Q. And resulted successfully for the plaintiffs? A. Yes.

Q. What did you do after the conclusion of the trial? A. The result of the trial was discussed between me and Mr. Judd. Mr. Judd attended all of the trial. I telephoned Washington. I believe I did not go to Washington until after the turn of the year.

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Q. In preparing for the trial of this case, did you make use of the records of the firm of Crossman & Sielcken? A. Yes.

Q. They were actually used on the trial, were they not? A. Yes.

Q. The proof was made up largely from those records? A. From the books of Crossman & Sielcken.

Q. Will you proceed with your narrative, P. 1661 please, as to what you did after the successful termination of the trial? A. In January the arrival of counsel for the German Agent 576 brought notice to me of the beginning of conferences in Washington looking to the arrival of the German Agent himself, Von Lewinski, and there were several of those meetings in Washington at different times, leading up to the performance of the tentative agreement for fifty-fifty settlement arrived at in Berlin in April, 1928.

Mr. Bacon: That was first recommended at sixty-forty, was it not, and then afterwards fifty-fifty?

The Witness: Yes. We tried to get sixty for the estate.

Mr. Bacon: If I may interject here, after Von Lewinski came to Washington, sixty-forty

was recommended by him; that was the subject of discussion, was it not?

The Witness: Yes, there was a discussion about the rate of exchange of the German Mark, which would have resulted in an increase to sixty per cent from fifty per cent. Dr. Von Lewinski said that he remembered that the judgment of Solomon had been agreed to in Berlin of dividing the baby.

Mr. Bonynge attempted to get a larger net result by using a different rate of exchange in 578
the settlement. Von Lewinski's reply was that he thought he had a gentlemen's agreement,
P. 1662 but he was not certain what a gentlemen's agreement with a lady meant. Finally, it went through exactly as it was arranged in Berlin.

The Referee: When you say sixty-forty and fifty-fifty, you refer to some liquidated amount, half of which was to be paid in settlement?

The Witness: Yes. We had to reduce the Marks to dollars, and much would depend upon what rate of exchange was used, as to whether, in returning to the estate and to Crossman &
Sielcken in liquidation—what they got in dol- 579
lars.

The Referee: There had been an agreement, then, in Berlin on an amount of Marks that was due somebody over here?

The Witness: Not quite. The agreement was that right straight through there should be an even division, even extending to the moneys in possession of the A. P. C.

The Referee: Even division between whom? That is what I cannot get into my head.

The Witness: The estate was to take one-half and the Germans were to get the other half, or to be released from the other half of the—

The Referee: In other words, there was to
P. 1663 be an agreement on the claim, and the German

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Government was claiming either 60 per cent or 50 per cent?

The Witness: Or to receive 50 per cent, because they received one-half of this Z. E. G. money which came from the A. P. C., and they paid one-half of the settlement which was necessary to make with the house of Theodor Wille.

By Mr. Hasbrouck:

Q. How long did these conferences to which you have referred continue? A. Down to within a week of the entry of the compromise award by the Mixed Claims Commission.

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Q. When was that award entered? A. April, 1930.

The Referee: That was an award to the executor?

The Witness: Award to the claimants.

The Referee: Who were the claimants?

The Witness: The claimants were Crossman & Sielcken, an American partnership.

Mr. Wrubel: Was not the claim made in the name of Sorenson & Nielsen as liquidating partners?

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The Witness: I would have to refresh myself from the—

Mr. Hasbrouck: The memorials are in evidence, your Honor. They speak for themselves.

Mr. Bacon: The action was brought in the names of Sorenson and Nielsen alone, was it not?

P. 1664

Mr. Hasbrouck: I think that is correct.

Mr. Bacon: And the memorials were filed with three names. I suppose we can agree that the Columbia Trust Company and the Columbia-Knickerbocker Trust Company and the Irving Trust Company are all the same corporation?

Mr. Hasbrouck: Yes.

The Referee: I think that is in the pleadings.

Mr. Hasbrouck: I offer in evidence a copy of a letter from Earl B. Barnes to Arthur Garfield Hays, dated March 27, 1930, together with a copy of a letter thereto annexed from Clara Sielcken-Schwarz to Messrs. Brainard Avery and Earl B. Barnes, bearing the same date, and the approval endorsed thereon of the executor of the will of Hermann Sielcken.

Mr. Bacon: Also, at the foot of the letter itself, there is the underwriting, "The foregoing is in accord with my understanding of 584
the terms of settlement hereinabove described." Signed by Mr. Hays.

• • • • • •

Mr. Bacon: No objection, subject to verification.

(Received in evidence and marked Petitioner's Exhibit 345.)

P. 1665 Q. Were releases executed in connection with the settlement, Mr. Avery? A. Yes.

Q. Was it necessary to send certain of them to Germany before the settlement could be 585
finally effected? A. Yes.

Q. Do you recall when they were returned from Germany? A. April 19, 1930, I believe.

Q. Now, when were the terms of the settlement, in part at least, first carried out? A. April, 1930.

Q. There was a subsequent distribution under the terms of the award in June following, was there not?

Mr. Bacon: Partial distribution, you mean.
Mr. Hasbrouck: Partial distribution.

A. Yes, the steps taken were the surrender by the A. P. C. of the Z. E. G. money, in accordance with the decree of Judge Caffey's court. Those moneys remained in escrow until after the compromise award had been entered

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and the payment of German funds from the United States Treasury was made.

Mr. Hasbrouck: I offer in evidence a copy of a letter from Brainard Avery to Crossman & Sielcken in liquidation, John S. Sorenson and Thorleif S. B. Nielsen, liquidators, dated April 24, 1930.

Mr. Bacon: Subject to verification, I have no objection.

P. 1666
587 (Received in evidence and marked Petitioner's Exhibit No. 346.)

Q. While these negotiations were proceeding, and the settlement finally agreed upon was being carried out, did you learn of the existence of any claims against the estate resulting from these recoveries? A. Yes.

Q. What were they and by whom were they brought to your attention? A. A lawyer representing Mr. John S. Sorenson called on me with an auditor, saying that Mr. Sorenson made a claim. In the spring of 1930—

588 Mr. Bacon: Who was the lawyer?

The Witness: Nielson Olcott.

A. (Continued) In the spring of 1930, one of the export managers, Mr. Kilpatrick, called upon me, and later his lawyer, Mr. Gregory, called. Mr. Stewart of Boston called on me in person, I think in June, 1930, saying that he claimed a share of the judgment against the A. P. C.

Q. What was the claim of Mr. Sorenson, in so far as you were advised of it at that time? A. Mr. Olcott took the general position that the facts of the recovery fell within the theory of a Federal tax case called Sanford & Brooks, that the losses, having been written off and were subsequently recovered, thereupon became realized profits *in toto*, and that the recov-

P. 1667 eries, on his theory, being entirely profits, Mr. Sorenson was entitled, under his partnership arrangement, to 12 1/2 per cent of the entire recovery of the entire compromise award.

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P. 1670 Mr. Hasbrouck: I also offer in evidence a copy of a letter dated April 17, 1930, from O. R. Judd, Vice President, to Leonard B. Smith, including the annotation on the second page that a copy thereof was sent to Mr. Avery and a copy to Mr. Hotchkiss. 590

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P. 1671 The Referee: It will be admitted.

(Copy of letter dated April 17, 1930, from O. R. Judd, Vice President, to Leonard B. Smith, received in evidence and marked Petitioner's Exhibit No. 348.)

Q. After the receipt of Petitioner's Exhibit 347, which I now show you, will you tell us what you did? A. There were constant meetings with counsel and an accountant representing Mr. Sorenson. 591

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P. 1672 During the summer Mr. Woody, counsel for Nielsen, spent some time with me on the subject of a possible claim that Mr. Nielsen might make. Mr. Nielsen himself made no claim in his lifetime to me.

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P. 1674 Q. Did you go abroad in the autumn of that year in connection with this matter? A. Yes.

Q. When did you go? A. October.

Q. Where did you go and whom did you see? A. Paris, and met Mrs. Sielcken and Mr. Sielcken.

Q. And what did you do while you were there? A. I showed them all the material, all

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the important material, the material which I deemed important, which I had obtained up to that time.

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Q. Did you have a conversation with them while you were there? A. Yes.

Q. Tell us what it was.

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A. My hurried trip to Paris related particu-
593 larly to Mr. Sorenson's claim. The attorney and accountant had formulated a claim upon a theory which, if accepted, gave him a substantial interest in the recoveries, that is, one-eighth. The papers and records furnished me by the executor showed, as near as—

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The Witness: I told the Sielckens that the papers which we had been able to analyze showed, in the opinion of William Martin and myself, that Mr. Sorenson had been overpaid to a very large amount.

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Q. Proceed. A. I told Mrs. Sielcken and Mr.
P. 1676 Sielcken that the statements which I brought with me, formulated upon the theory which Mr. William Martin and myself were working on, showed an overpayment to Sorenson & Nielsen of nearly a quarter of a million dollars.

The Referee: By the executor?

The Witness: No, at the close of business in September, 1917, which was several months before the appointment of the executor.

The Referee: Who overpaid them; who did you say overpaid them?

The Witness: They took the money themselves, but, as I told them, it appeared to be with the approval and assistance of the Irving Trust Company.

Q. Do you recall anything else that was said at that time? You must have had more conversation than on this one point. A. The working sheets were examined in detail by Mr. Sielcken with me. Much time was given to the question of adjusting with Mr. Sorenson.

Q. By "adjusting," you mean his claim, I take it? A. By either adjusting his claim or recognizing his services, not only throughout the recoveries but for many years to Mr. Sielcken personally, and I explained to them the emergency that had caused me to make a round trip on the "Aquitania" to meet them in Paris, which emergency was explained by Mr. Sorenson's lawyer to be his serious financial position, that if anything was to be done for him it should be done promptly, and might be of assistance to him in getting the business in New York going.

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P. 1677

Q. Mr. Sorenson was then engaged in business in New York? A. Yes.

Q. As a member of the firm of Sorenson & Company, was he not? A. Yes.

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Q. How long were you on the other side? A. About five days. I made a round trip on the "Aquitania."

Q. Do you recall when you arrived in New York on your return? A. Yes.

Q. When was it? A. October, 1930.

Q. Did you have any conference or conversation with anyone after you returned with reference to the results of your trip? A. Yes, immediately.

Q. With whom? A. In the first instance, with Mr. Judd, Mr. Warren and Mr. Hotchkiss, and then, immediately following that, Mr. Sorenson's counsel, Mr. Olcott.

Q. What did you say to Mr. Judd, Mr. Warren and Mr. Hotchkiss, and what did they say

P. 1678

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to you? A. I told them that Mrs. Sielcken could not understand the apparent overpayment to Mr. Sorenson, but that she expressed herself as grateful to those who had been helping in the recovery; that during his lifetime Mr. Sielcken had expressed his high opinion of Mr. Sorenson; that she sympathized with the business troubles that threatened to overwhelm him; that she supposed she had made all the business arrangement necessary with Mr. So-

599 renson in 1927, which was a letter which Mr. Sorenson had written her, which she had accepted, paying him $4,000 for his work in connection with the recoveries; that she, subject to the approval of Mr. Hotchkiss, wished an immediate adjustment made with Mr. Sorenson, and that if such an adjustment was to be made, the funds were to be provided.

Q. Adjustment of what? A. Of Mr. Sorenson's claim, whether it was just or unjust.

The Referee: The funds were to be provided by whom?

600 The Witness: That was to be arranged between Mr. Warren and the Chase and Mr. Judd and the Irving.

Q. What, if anything, did you do after your return with reference to the adjusting and settling of the claim of Mr. Sorenson? A. There was a settlement made in which Mr. Sorenson received nearly $60,000, and I purchased Mr.

P. 1679 Sorenson's claim in the name of Mr. Sielcken.

Mr. Bacon: Mr. Alex Sielcken?

The Witness: Mr. Alex Sielcken, for $30,000, which was part of the $60,000. Mrs. Sielcken had some notes of Mr. Sorenson, which loans had been made during the pendency of the claims, and a partial adjustment was made of those notes.

Q. A settlement was consummated on substantially that basis, was it not? A. Yes.

Q. Now, during this period, do you know whether the examination of the books and records of the firm, to which you have already referred, was continued? A. No, not continuously during the fall. The Nielsen claim was being pressed, also the managers', and then Mr. Stewart's. The settlement with Mr. Sorenson came, and for a period I was busy with Mr. Woody's assistant, in giving them the figures on the 602
theory which I had of the affairs of Crossman & Sielcken.

The Referee: Woody representing—?

The Witness: Mr. Nielsen's estate, the ancillary executor of Mr. Nielsen's estate, the Chase National Bank.

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P. 1680 Q. It was at about this time, was it not, that the action of the Nielsen estate was commenced? A. Yes, November, 1930.

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P. 1683 Q. Who then represented Mr. Sorenson? A. First, Mr. Welch, and then Mr. Tibbetts and Mr. Welch.

Q. Were they members of a firm, do you know? A. Later Mr. Welch became associated with Tibbetts, Lewis & Rand.

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The Referee: Was there a suit brought to set aside the Sorenson settlement?

The Witness: Not a separate suit, but Mr. Sorenson was made a defendant in a suit by
P. 1684 the executor of the estate of Mr. Nielson, a brother-in-law, and he reserved the right in that suit to ask for affirmative relief.

Q. Were you advised at that time that Mr. Sorenson would repudiate the settlement that

had been made? A. Yes; when Mr. Welch first came in, Mr. Sorenson insisted on completing the liquidation, as he claimed to be a liquidator of Crossman & Sielcken and not an employee of the executor.

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Q. Had a tax situation developed early in 1931, Mr. Avery, with reference to the Sielcken estate? A. Yes, the question of reporting the 1930 recoveries arose in connection with the
605 tax return which was due March 15, 1931.

Q. What, if anything, did you do in connection with that? A. That matter was placed in my charge by Mrs. Sielcken and the executor.
P. 1685 Q. What did you do? A. I retained Judge Hamel, a former Chairman of the United States Board of Tax Appeals in Washington. I retained the services of Mr. James Miller, a C. P. A. connected with the firm of accountants of Weiss & Company, New York, and spent considerable time with Mr. Miller and Mr. William Martin in getting data for the tax return.
606 That was complicated by Mr. Sorenson filing a separate tax return upon a different theory than that recommended by Judge Hamel.

The Referee: Sorenson as an individual or Sorenson as liquidating partner?

The Witness: Sorenson as surviving partner of the firm of Crossman & Sielcken, I mean; Mr. Sorenson alleging that he was surviving partner, and taking the position that the recoveries were 1930 profits. Our position was that it was recovery of capital.

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P. 1689 Q. What did you do after the trial of the Nielsen case commenced in December of 1931? A. We were engaged constantly daily together with Mr. Alger and Mr. Hasbrouck in conducting the defense of the Nielson case.

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P. 1690 Q. When did Mr. Wolff render his decision in that case? A. I think February, 1938.

Q. When was the petition in the proceeding now on trial filed in the Surrogate's Court? A. March, 1932.

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P. 1695 Q. This round trip of yours on the "Aquitania" was in October, 1930? A. Yes.

Q. And at that time you saw Mrs. Sielcken and Mr. Sielcken in Paris? A. Yes. 608

Q. Did you tell them at that time that you were acting under retainer by the executor? A. I cannot remember the word "retainer" being mentioned. There were frequent allusions during our conference to the complete harmony between Mr. Judd and myself and Mr. Hotchkiss. Mrs. Sielcken was told of the meeting just before I sailed, with Mr.
P. 1696 Judd, Mr. Hotchkiss and Mr. Warren, and their views about the advisability of dealing with Mr. Sorenson—about the executor dealing with Mr. Sorenson, and Mrs. Sielcken's authorizing it. I cannot be definite that the 609 letter of retainer was discussed. The pendency of the claims of the managers, and that my firm would attend to their defense, was fully discussed with Mrs. Sielcken, and that we would appear for the executor and were conferring with counsel for the claimants. That was gone into in great detail with Mrs. Sielcken and Mr. Sielcken at this time in Paris.

Q. You told Mrs. Sielcken and her son that, in your opinion, Mr. Sorenson had been overpaid; is that right? A. As far as I could ascertain, Mr. Sorenson had overdrawn. The word "overdrawn" was used.

Q. And Mr. Nielsen also? A. And Mr. Nielsen, to the extent of $120,000, and they had taken salary in excess of $9,000 each, and

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other items at the close of the business of Crossman & Sielcken in 1917.

Q. Did you tell them that those payments were made with the knowledge of the executor or of the Columbia Trust Company? A. I don't remember that I did. The situation was not very clear at that time. The executor qualified, as I remember, as temporary administrator, about Christmas time of 1917, and became

P. 1697 executor on January 26, 1918.

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Q. Did they not ask you whether there was some way of recovering the overdrafts of Sorenson and Nielsen? A. They did.

P. 1697 Q. What did you say to them? A. Mr. Sielcken expressed the opinion—

Q. What did you say to them, Mr. Avery? A. I am trying to say Mr. Sielcken had expressed the statement that Mr. Sorenson would be unable to respond. I told them that the Nielson estate was a New Jersey estate and that it would be worth while looking into proceeding

612 against the estate in New Jersey.

Q. Did you tell them that you discussed the question of these overdrafts or overpayments with Mr. Hotchkiss or Mr. Judd? A. Yes, and with Mr. Warren.

P. 1698 Q. Did you tell them in any way that the executor could be made responsible for these overpayments? A. I have no recollection of any such conversation in Paris, in 1930.

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P. 1699 (Recess from 1:00 P. M. to 2:15 P. M.)

After Recess.

BRAINARD AVERY, resumed.

Direct Examination (continued) by Mr. Hasbrouck:

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P. 1705 Q. When you first went to the State Department about March 1, 1927, Mr. Avery, were you under employment by Mrs. Sielcken? A. No.

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Q. Under whose employment were you? A. No one.

Q. This was after you had been consulted by Mr. Alex Sielcken about the matter, was it not? A. No.

B. Avery—Cross:

P. 1705 Q. I thought you testified that you saw him in February and talked over the question of these cargoes with him. A. That was a casual conversation, in which I told him that I would make some inquiries in Washington when I was there on another case. I did so.

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P. 1706 Q. Do you recall the name of the man in charge of claims against Great Britain whom you saw in the State Department? A. No, except it was a French-sounding name. I would recognize it if you would read it to me.

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Q. When Mr. Sielcken took you to Mr. Judd and introducted you to Mr. Judd, what did he say? A. Mr. Sielcken or Mr. Judd?

Q. Mr. Alex Sielcken. A. Something to the effect that "This is Mr. Avery, about whom I have been talking about the fat backs matter." We called the Copenhagen cargoes, in the first instance, fat backs.

Q. Did you not say that you were representing his mother in that matter? A. I recall nothing of that kind at present.

Q. You also spoke of calling at the office of the American Agent of the Mixed Claims Commission, United States and Germany, on your
P. 1707 first visit there. Whom did you see there? A. Mr. H. H. Martin.

Q. The Counsel to Mr. Bonynge? A. Yes.

Q. You say you saw the Stewart files in Bos-
617 ton shortly after that? A. Yes.

Q. In March, 1927? A. Yes.

Q. You later got those files from Mr. Stewart? A. Yes, I think they were the same files I saw.

Q. You found in those files, did you not, a letter from Mr. Nielsen to Mr. Stewart, explaining that Wille had, I think, a forty per cent interest in the cargoes, antedating the employment of Mr. Stewart? A. No, I did not see it at that time.

Q. When did you see it? A. To the best
618 of my recollection, I saw it following Mr. Sorenson's statement to me of the one-half interest in the joint account with Wille.

Q. When was that? A. In the spring of 1927.

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P. 1714 Q. I call your attention to this letter of yours, Exhibit 10084, and ask you if you do not find a a quotation from that letter in there? A. Yes,
P. 1715 there is a quotation.

Q. Do you wish to correct your answer, then, to that? A. No. In March, 1933, Mr. Bacon was engaged in preparing the defense of the Stewart suit. At that time Mr. Bacon had the Leonard B. Smith files.

Q. Do you claim to know that of your personal knowledge, Mr. Avery? A. Mr. Bacon said he had them and sent me some of these papers

to examine. I admit that on March 3, 1933, there was a copy of a letter from L. B. Smith to F. H. Stewart that contained that quotation. My belief is that Mr. Bacon sent me excerpts or possibly a file, and asked me to patch it out. Mr. Bacon asked me to communicate with Mr. Sielcken, and this letter of March 13, 1933, was my answer to Mr. Bacon's request to co-operate in enabling him to prepare the defense of the Stewart claim. It is possible I may have seen the whole letter, and yet it gives Mr. Stewart 620 the lie from the jump.

Mr. Bacon: If there is no objection on the ground of its being a copy, I will offer this letter from Mr. Smith to Mr. Stewart of May 7, 1924, sir.

P. 1716 The Referee: I will receive it.

Mr. Hasbrouck: The petitioner is in no way connected with it, your Honor.

The Referee: The petitioner is criticizing the acts of the executor.

Mr. Hasbrouck: The witness has testified—

The Referee: Excuse me, sir. The petitioner 621 is criticizing the acts of the executor. The executor was acting on the advice of counsel. Apparently, the ultimate result showed that counsel advised them incorrectly. This, at least, is some evidence that the counsel upon whose opinion the executor acted knew the facts which Mr. Avery ultimately developed, and that the petitioner was not concealing these things from counsel. That is the only purpose I can see it for.

Mr. Bacon: Concealing it from the Government, sir.

The Referee: Or concealing it from the Government people. In other words, if the executor acted in good faith on the advice of counsel,

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there is some testimony here that they investigated Stewart & Chase and found that they were reputable people, and if counsel advised
P. 1717 them wrongly, that at least is a fact which is relevant to the situation.

I will receive Exhibit 10086 in evidence.

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Mr. Bacon: So that your Honor understands the exact relationship—I do not think there is any question about this, but I may explain it—
623 the first memorials were filed in 1922. The claim on these Copenhagen cargoes, I think, was predicated on the theory, which they were advised by counsel in Washington was then thought to be correct, that the German Government was responsible for seizures made by the British Government in retaliation for the submarine policy of Germany.

P. 1718 While that was pending, a decision adverse to that claim was announced in another case.

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624 Mr. Bacon: Then Mr. Stewart came in and thought he could present a claim against the British Government. That was the second claim.

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P. 1721 Q. What item of information, if any, did you get from any files of the executor, from any files in its possession or books in its possession, that indicated that Z.E.G. was the purchaser of the cargoes?

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P. 1722 A. I learned one-half of the fat backs cargoes—

By Mr. Bacon:

Q. I am not asking for your conclusion. What information did you get? A. I learned from them—

The Referee: From what?

The Witness: From the files and records of the executor.

Q. I want to know just what information you got there, not what conclusion you drew from it.

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P. 1723 The Witness: No, I learned from the books of Crossman & Sielcken that one-half of the Copenhagen cargoes were owned by Theodor 626
Wille and were charged in a joint account to
P. 1724 them.

The Referee: What books?

The Witness: The books of the company.

By Mr. Bacon:

Q. You mean owned by Willie? A. No, by Wille on the books of Crossman & Sielcken. I learned that Theodor Wille was a German enemy.

The Referee: What books did you learn 627
this from?

Mr. Bacon: I will concede that that was entered up, that Wille owned half the cargo. That is entered right up on the books. There is no question about that.

The Witness: This information appears on the books of Crossman & Sielcken in several places.

Q. Any other items of entries on the books, or letters in their files bearing on the question of Z.E.G. being the purchaser, you obtained from their books and papers?

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P. 1727 The Witness: The books of Crossman & Sielcken show that Harry Levin and Beckmann

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& Jorgensen were the consignees of the Copenhagen cargoes.

By Mr. Bacon:

Q. All of them? A. Except the Paulsen.

Q. Can you turn to the entries on the books that show this? A. I had and may have the duplicate original bills of lading.

Q. Will you produce those? A. If we can find them. The copy of the Prize Court decision stated that Levin and Beckmann & Jor-
629 gensen were agents for Reichs Einkauf.

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P. 1727 A. (Continued) I put the three things together and found Z.E.G.

* * * * * *

P. 1728 Q. You spoke of the item of claim of Crossman & Sielcken against Theodor Wille, and also of a settlement of that claim, which you afterwards referred to as an adjustment made by the German executors. I suppose you mean
630 the German executors of Sielcken, do you not? A. Yes.

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Q. I show you this photostatic copy, certified by Mr. Martin, of exhibits to the German answer, and ask you if the exhibits, A, B, C, D and E, and the translations appended to that German answer of those documents, are the documents with regard to that adjustment or settlement, whatever you call it. Each document, I think, is given in German, followed by a translation into English.

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P. 1729 A. I cannot identify these papers, except that they were produced by Dr. Hugo Israel in Berlin in March, 1928, as a record of what

had happened in Germany, and they were used in arriving at the adjustment of the compromise award, as being true.

Q. True copies? A. As being a record, a true record of the fact.

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The Referee: Mr. Avery, if I remember correctly, testified that in his conference in Berlin with the Foreign Office officials, the question of the settlement or adjustment of affairs between Wille & Company and the German executors arose, and that there had been an adjustment which was taken into consideration in the final settlement. 632

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P. 1730 Mr. Bacon: You made one slight misstatement in your statement. You said that was a settlement with Wille. This is the settlement with Z.E.G.

The Referee: I beg your pardon. I will admit them.

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P. 1731 Q. When was this answer of the German Government to the Z.E.G. memorial filed, do you recall? A. October 30, 1928.

Q. And you received a copy promptly? A. I had these exhibits in Berlin in March, 1928.

Q. You saw them in March, 1928? A. Yes.

Q. And then you received copies of them in connection with the answer of Z.E.G.? A. Again I received copies in the answer.

Q. Did you have any talks with Mrs. Sielcken about that compromise with Z.E.G.?

Mr. Hasbrouck: When?

Mr. Bacon: After seeing these papers, or before.

A. Yes.

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Q. Can you fix the date? A. April, 1928.

Q. And where was that? A. At her place in Holstein.

Q. Did you tell her that these papers had been shown you? A. Yes.

P. 1732 Q. What did she say? A. I recall no comment by her.

Q. Did she then say to you anything about knowing about that settlement previously, or adjustment, whatever you call it? A. She said

635 she had never heard of Z.E.G., nor of the arbitration. I told her I was instructed by Dr. Von Lewinski to ascertain whether the nominal claims of the memorials could be reduced approximately one-sixth. He said that if such a deduction or withdrawal was made, he would discuss adjustment as to the balance of the claim.

Q. What did she say to that? A. The answer came from Mr. Alex Sielcken.

• • • • • •

Q. What was that answer? A. To take any-

636 thing I could get from Germany above a million dollars.

Q. Had you any discussion with Mrs. Sielcken at any time, and, if so, when first, about the prior adjustment with the firm of Theodor Wille? A. I recall none, except as it was raised by the German conferees in Berlin, and I reported it to her.

Q. When was that? A. This was at the time of the meetings in Berlin in March and April, 1928. I met her in Holstein and in Hamburg, and frequently telephoned Mr. Alex

P. 1733 Sielcken.

• • • • • •

P. 1735 A. The German Agent handed me a statement of the account of Theodor Wille with

Crossman & Sielcken. One of the accounts was known as Prado, a Brazilian transaction, which they declined to discuss.

The Referee: Who declined to discuss?

The Witness: The Germans. The cable transfer of the million dollars in August and September, 1916, they offered to prove was correct. The Germans claimed that they had handed, after the war, a quantity of German war bonds in settlement of Wille's account with Crossman & Sielcken, about three million Marks par value. Mrs. Sielcken had disposed of these bonds, as I recall, during the inflation, when she received them, for a sum not much in excess of $1,000. At the beginning the Germans claimed this was a settlement with Mrs. Sielcken. I then asked them that, assuming it was a settlement, would they prove that Wille had bought the bonds? They showed no document of settlement.

638

P. 1736

• • • • • •

P. 1739 Matter of Hermann Sielcken, continued. 639

43 Exchange Place,
New York, N. Y.,
January 18, 1935, 10:30 A. M.

Before: Walter N. Seligsberg, Esq.,
Referee.

Present:

Howard Hasbrouck, Esq.,
Brainard Avery, Esq.,
Albert Avery, Esq.,
Selden Bacon, Esq.,
David S. Hecht, Esq.,
Robert W. Wrubel, Esq.

640 *Exhibit T Annexed to Affidavit of Frank C. Sterck*

BRAINARD AVERY, resumed:

Mr. Bacon: I would like to offer this copy of the docket entries of the United States District Court for the Southern District of New York, in the case of Sorenson & Nielsen v. Sutherland, Frank White and Z.E.G.

• • • • • •

(Received in evidence and marked Respondent Irving Trust Company Exhibit 10091.)

641

P. 1740 *Cross Examination (continued) by Mr. Bacon:*

Q. That case, Mr. Avery, was tried before Judge Caffey without a jury, was it not? A. Yes.

• • • • • •

P. 1785 Q. Mr. Avery, you testified to certain settlements, or adjustments, which you preferred to call them, with Theodor Wille by Mrs. Sielcken. Were the figures of $32,454.42 and $62,062.50 the amounts which Mrs. Sielcken received under that adjustment?

642

• • • • • •

The Referee: The question of these adjustments came up in one of your visits to the Foreign Office in Berlin, did they not, and all
P. 1786 the data offered here on that subject was the basis of your opinion?

The Witness: Which was used, yes.

Q. But you asked Mrs. Sielcken about them, did you not? A. Yes.

• • • • • •

The Referee: Do you know, Mr. Avery, whether those were the amounts that Mrs. Sielcken received?

The Witness: I do not know.

Q. Do you recall what Mrs. Sielcken said to you about them? A. Yes, that there had been

some payment received by her directly or indirectly from Theodor Wille.

Q. Did she tell you the amount? A. I mentioned to her the amount, and I understood her to acquiesce.

Q. What was the amount you mentioned? A. My recollection is it was around $30,000.

The Referee: Which was undoubtedly the amount that you derived from those papers
P. 1787 that you saw in Berlin? 644

The Witness: Yes, the transcript of the Wille books furnished the German agent.

* * * * * *

P. 1789 Q. Mr. Avery you said that in 1929, when you were over with Mr. Alger, you examined the record in the Prize Court case? A. Mr. Alger did.

Q. You did not? A. Not then.

Q. Did you yourself examine it at any other time? A. Yes.

* * * * * *

P. 1790 Q. I call your attention to this letter signed 645
"H. Sielcken," addressed to "My dear Mr. Sorrenson," dated September 22, 1914, and ask you if you saw that paper in the files of Crossman & Sielcken? A. Yes.

* * * * * *

(Letter from H. Sielcken to Mr. Sorenson, dated September 22, 1914, received in evidence and marked Respondent Irving Trust Company Exhibit 10103.)

* * * * * *

P. 1794 Q. Now, at page 1676, do I understand that you told Mr. and Mrs. Sielcken in 1930, that the taking of the $120,000 apiece, or thereabouts, by Sorenson and Nielsen, was done with the assistance of the Irving Trust Company? A. Yes, I told them that the drawing out of those 1917 profits appeared to be with the assistance of Mr. Warren of the Irving.

646 *Exhibit T Annexed to Affidavit of Frank C. Sterck*

Q. On what fact did you predicate that statement?

A. The following facts, as I believed I had found them:

P. 1795 In the period, June 2nd to December 31, 1913, Crossman & Sielcken was in the red; for the calendar year 1914, C. & S. was in the red; for the calendar year 1915, C. & S. was heavily in the red; for the calendar year 1916, C. & S. was
647 in the red; for the nine months ending September 23, 1917, C. & S. made $960,000 of profit, which had been divided; that I had examined how those profits were made up and had a list of them; that that matter had apparently been gone into with Mr. Warren of the Irving Trust Company, the checks had been drawn by Mr. Sorenson and sent up to Mr. Warren for approval; that the approval had been given and the checks had been cashed.

P. 1796 Q. At page 1678, you said there was a settle-
648 ment made in which Mr. Sorenson received nearly $60,000, and that he assigned his claim to Mr. Alex Sielcken for $30,000, which was part of the $60,000, and then you said she had some notes. Was the balance of the settlement money credited on notes that Mrs. Sielcken held of Mr. Sorenson? A. The amount received by Mr. Sorenson was in cash, and a credit on notes.

P. 1797 Q. The notes exceeded that other $30,000? A. Yes.

Q. And the balance of the settlement was credited on the notes? A. No, Mr. Sorenson received his money, $30,000 in cash, from Mr. Sielcken through the Chase Bank, and there was an adjustment made by reducing Mr. Sorenson's notes.

Q. I say, the balance of the settlement was done by a credit on the notes? A. Yes.

Q. Now, in the Nielsen case, Sorenson filed a counterclaim, did he not, in his answer? A. He claimed to be liquidator.

* * * * * *

P. 1798 Q. And that issue of whether he was the liquidator of the firm or the Trust Company was decided adversely to his contention, was it not? A. By the Referee. yes.

Q. And judgment entered? A. Yes.

* * * * * *

P. 1843 Q. In the cargo suit, I mean the suit against 650
Z.E.G. in the District Court here, that was entirely conducted by your firm and those retained by you, was it not? A. Yes.

Q. Including some or all of the gentlemen that you have mentioned? A. Mr. Alger and Mr. Barnes and myself.

Q. The Irving Trust Company was not even a party to that suit, was it? A. No.

Q. But it was joined in the memorials? A. Yes.

Q. Neither Mr. Smith nor any member of the firm of Davies, Auerbach & Cornell were in any way active in the conduct of those proceedings, 651
were they? A. Yes.

Q. How, and who? A. Mr. Hotchkiss was acting personally for Mrs. Sielcken. He examined the drafts of the memorial, and I think the
P. 1844 briefs. Mr. Leonard B. Smith paid some casual attention to the matter. I don't recall any action or advice given by Mr. Smith, approval or disapproval.

* * * * * *

P. 1847 Q. Whose idea was it to bring the suit in the District Court in the names of Sorenson & Nielsen without mentioning the executor or joining the executor as a party? A. I think it was mine.

Q. What reason had you for proceeding in that way?

* * * * * *

652 *Exhibit T Annexed to Affidavit of Frank C. Sterck*

A. I wanted to make the suit stick.

P. 1847 Q. What had the omission of the executor from that suit to do with that matter?

* * * * * *

Q. In your judgment? A. At that time, all of 1927, I knew that Mr. Sielcken had died in an enemy country, that under the Trading with the Enemy Act, he had an enemy status, that Mr. Sorenson and Mr. Nielsen had no such obstacles

P. 1848 to overcome, the executor not being in any bet-

653 ter position than Mr. Sielcken himself. Congress had passed an Amendment specifically appropriating the money reported by the Equitable Trust as Unknown Enemy No. 1 for the benefit of the dollar bondholders. Papers were drafted for a mandamus proceeding in the District of Columbia against the Treasurer of the United States, preventing or seeking to prevent the payment by the Treasury of this money to the dollar bondholders who were said to be creditors of Germany, the distributee of Z. E. G. in liquidation.

654 Q. By "dollar bondholders" you mean holders of German bonds payable in dollars? A. Yes. The elimination of the executor was thought to simplify the litigation and to remove the question of Mr. Sielcken's being physically present in Germany.

Q. At the time you prepared that bill, you were familiar, were you not, both with the articles of co-partnership and the will? A. The bill was prepared in the first instance by Mr. Barnes, but we were both familiar with the papers.

Q. With those two documents? A. Yes.

Q. And you were at that time familiar with the fact that Sorenson and Nielsen had been settled with in December, 1917? A. No.

P. 1849 Q. Did you not know there had been paid them about $120,000 apiece at that time? A. No,

I never knew anything about the internal affairs of Crossman & Sielcken until much later. It was not my job.

Q. Now, did the Irving Trust Company in any way itself, or by its own attorneys, take any part in the preparation or form of these memorials and of this bill in equity? A. Everything that was done was done with the knowledge of Mr. Judd, but I can think of no paper or criticism of a paper writing which was prepared by counsel for the Irving in these matters. 656

Q. Or by Mr. Judd? A. Mr. Judd's part was to keep himself closely informed of what was being done and what was intended to be done.

Q. Did he make any suggestions about the form of the papers, or any corrections of them? A. I remember several discussions with Mr. Judd, but they were largely of an informatory nature to him. He said he wanted to help, and did give us papers and access.

Q. Do you recall making any changes in the papers in response to any suggestions from him that the papers should be changed? A. I remember Mr. Judd asking why the executor was 657 omitted from the suit which was tried before Judge Caffey.

P. 1850 Q. That is the Z. E. G. case? A. Yes.

Q. Did he make any suggestion of change in the papers? A. I can think of nothing of importance.

* * * * * *

Q. Did you have any consultations with Mr. Hotchkiss over the form of the papers you filed? A. There were a few discussions with Mr. Hotchkiss, but my recollection is that they were more in the nature of keeping him informed of what was going on.

Q. He did not attempt to advise you about them, did he? A. No, I think not; he made efforts to get papers.

Q. For you? A. In aid of these claims, as did Mr. Judd.

658 **Exhibit U Annexed to Affidavit of Frank C. Sterck.**

Copy of account of Theodor Wille on the books of Crossman & Sielcken, dated September 30, 1917, charging Theodor Wille with one half of the loss on the cargoes which were seized by the British Naval Authorities in April, 1915.

Petitioner's Exhibit No. 534, 5/25/35 L. C.

659 *Defendant Irv. Trust Co.'s Exhibit 41, Feb., 1932 B. G.*

Sept 30, 1917.

Theodor Wille, N. Y. a/c, Dr.

To Crossman & Sielcken, J/A, Copenhagen Cargoes, To amount of Theodor Wille's half share of loss on Copenhagen Cargoes, shipped in 1915, as follows: (seized by British Govt.).

1915

Feb. 27—per "Hilding"		95,578.29
660 Feb. 23— " "Arkansas"		48,686.81
" 30— " "Hellig Olav"		28,105.99
Feb. 13— " "Gunborg"		43,997.16
" 23— " "Indianic"		53,471.41
" 28— " "Oscar II"		83,625.87
		353,465.53
May 26—Received for cereals "Oscar II"		8,050.44
		345,415.09

(4/259)

Exhibit U Annexed to Affidavit of Frank C. Sterck. 661

Add

Copenhagen Expenses—paid by Theodor Wille—	20,206.39		
Legal fees—London & N. Y.	14,533.47		
Interest to Sept. 30/17 @ 5% =	40,695.61	75,435.47	
		420,850.56	
Less Profits on Cargoes paid for—		66,641.60	
1/2 of which		354,208.96	= 177,104.48

662

663

664 **Exhibit V Annexed to Affidavit of Frank C. Sterek.**

Letter dated March 24, 1930 from Arthur Garfield Hays, attorney for the Zentral-Einkaufs-Gesellschaft, to The Attorney General, advising that the Zentral-Einkaufs-Gesellschaft would not take an appeal from the decree.

Address Reply to
"The Attorney General"
and refer to
665 Initials and Number

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

March 24, 1930.

9-17-9-9394

File
LER

The Honorable,
The Attorney General,
666 Washington, D. C.

Attention: Mr. Rhodes.

Sir:

In Re: Sorenson & Nielsen v. Sutherland, *et al.*

This is to advise that the Zentral Einkaufs Gesellschaft will not take an appeal from the decree entered in the above matter dated December 30, 1929, and entered January 2, 1930.

Yours truly,

ARTHUR GARFIELD HAYS,
Atty. for Zentral Einkaufs Gesellschaft.

(Stamped):

Mar 31 1930

C Civil Div.

Apr 1 1930

Exhibit W Annexed to Affidavit of Frank C. Sterck. 667

Letter dated March 27, 1930, from Earl B. Barnes and Brainard Avery to Arthur Garfield Hays, setting forth the distribution of the proceeds of the award of the Mixed Claims Commission and of the amounts received in satisfaction of the decree entered by this Court in the instant suit in the Southern District of New York.

Telephone: Rector 1703-1704 Cable Address: Averwhit

BARNES, AVERY & WHITING

668

100 Broadway
New York

Supreme Court
New York County
Mar 4, 1931
Plaintiff's Ex 64
Robert Fisher
Official Stenographer

Brainard Avery
Earl B. Barnes
Jay E. Whiting
Geo. O. Castell

669

March 27th, 1930.

Arthur Garfield Hays, Esq.,
43 Exchange Place,
New York City.

Dear Sir:

Claims of U. S. A. on behalf of Crossman & Sielcken in Liquidation and Irving Trust Company against Germany and Z. E. G.

Z. E. G. against Executors of Hermann Sielcken deceased, and Clara Sielcken Schwarz as residuary legatee of estate of Hermann Sielcken.

Theodor Wille against Crossman & Sielcken in Liquidation, and Clara Sielcken Schwarz.

670 *Exhibit W Annexed to Affidavit of Frank C. Sterck*

Referring to our recent conversation with respect to the settlement of the above mentioned claims, we confirm to you that the following is our understanding of the terms of settlement upon which we have agreed:

1. The money and bonds received by Crossman & Sielcken, in Liquidation from the Alien Property Custodian and/or Treasurer of the United States, in payment of the decree for $716,160.37 of the United States District Court for the Southern District of New York, dated December 30, 1929, are to be forthwith deposited
671 in a bank in this city, to be selected by you and ourselves, in the joint names of Brainard Avery and Arthur Garfield Hays and to remain there pending consummation of the settlement herein described.

We are informed by the Alien Property Custodian that the fund to the credit of this trust amounted, on March 22, 1930, to the sum of $786,056.86, made up as follows:

Government bonds	$475,200.00
Cash	133,279.83
Income interest	177,577.03
672 Total	$786,056.86

We are further informed that there are no claims filed against the fund except the claim represented by said decree and one claim for $200.

2. The claim of Z. E. G. against the executors of Hermann Sielcken deceased and Clara Sielcken Schwarz as residuary legatee of his estate, arising out of the indemnity agreement dated August 31, 1918, is to be settled by payment to you, as attorney for Z. E. G., of one-half of the moneys and/or bonds received from the Alien Property Custodian and/or Treasurer of the United States, in payment of the principal of said decree with interest thereon accumulated from December 30, 1929 to the date of payment, together with one-half of any interest that may accumulate or be paid

thereon during the time said bonds and/or moneys are on deposit in said bank in the joint names of Brainard Avery and Arthur Garfield Hays as hereinbefore provided.

3. You are to produce and deliver to us four general releases duly executed by Z. E. G. and running to the following persons:

(a) To Estate of Georg Georgius, Estate of Gustav Diederichsen, Carl Isenberg and Richard Isenberg, as executors of the codicil to the Last Will and Testament of Hermann Sielcken, deceased, dated February 18, 1917. 674

(b) To Clara Sielcken Schwarz as sole beneficiary of the residuary estate of Hermann Sielcken deceased.

(c) To Columbia Trust Company (now Irving Trust Company) as executor of the Last Will and Testament of Hermann Sielcken deceased.

(d) To John S. Sorenson, as surviving and liquidating partner of the firm of Crossman & Sielcken.

4. We are to procure and deliver to you the following releases, duly executed by the parties signing the same, and running to Z. E. G.: 675

(a) A general release from Clara Sielcken Schwarz as sole beneficiary of the residuary estate of Hermann Sielcken deceased.

(b) A general release from Columbia Trust Company (now Irving Trust Company) as executor of the Last Will and Testament of Hermann Sielcken deceased.

(c) A general release from John S. Sorenson as surviving and liquidating partner of the firm of Crossman & Sielcken.

(d) A general release from Carl Isenberg and Richard Isenberg as executors of the codicil to the Last Will and Testament of Hermann Sielcken, deceased, dated February 18, 1917.

676 *Exhibit W Annexed to Affidavit of Frank C. Sterck*

5. The claim of Theodore Wille against Crossman & Sielcken in Liquidation and against Clara Sielcken Schwarz is to be settled by payment to you or your nominee for account of Theodor Wille, of the sum of $50,000 in cash of our clients share of the moneys and/or bonds received from the Alien Property Custodian and/or Treasurer of the United States, in payment of the decree dated December 30, 1929, hereinbefore referred to.

6. In connection with the settlement of the Wille claim, you are to procure and deliver to us four general releases duly executed by the firm of Theodor Wille and running to the following persons:

677

(a) To Estate of Georg Georgius, Estate of Gustav Diederichsen, Carl Isenberg and Richard Isenberg, as executors under the codicil of the Last Will and Testament of Hermann Sielcken deceased, dated February 18, 1917.

(b) To Clara Sielcken Schwarz, individually and as sole beneficiary of the residuary estate of Hermann Sielcken, deceased.

678 (c) To Columbia Trust Company (now Irving Trust Company) as executor of the Last Will and Testament of Hermann Sielcken deceased.

(d) To John S. Sorenson as surviving and liquidating partner of the firm of Crossman & Sielcken.

7. In connection with the settlement of the Wille claim, we are to procure and deliver to you the following releases, duly executed by the parties signing the same, and running to Theodor Wille:

(a) A general release from Clara Sielcken Schwarz, individually and as sole beneficiary of the residuary estate of Hermann Sielcken deceased.

(b) A general release from Columbia Trust Company (now Irving Trust Company) as executor of the Last Will and Testament of Hermann Sielcken deceased. Said release shall also specifically release Theodor Wille

of and from any and all claims of the Columbia Trust Company (now Irving Trust Company) more particularly set forth in the memorial or memorials for claim now pending before the Mixed Claims Commission, List No. 6207, Docket No. 8304.

(c) A general release from John S. Sorenson as surviving and liquidating partner of the firm of Crossman & Sielcken. Said release shall also specifically release Theodor Wille of and from any and all claims of John S. Sorenson more particularly set forth in the memorial or memorials for claim now pending before the Mixed Claims Commission, List No. 6207, Docket No. 8304. 680

(d) A general release from Carl Isenberg and Richard Isenberg as executors of the codicil to the Last Will and Testament of Hermann Sielcken deceased, dated February 18, 1917.

8. The payments to be made, and the exchange of releases hereinbefore provided for are conditioned upon an award being entered in favor of the United States of America on behalf of Columbia Trust Company (now Irving Trust Company) as executor of the Last Will and Testament of Hermann Sielcken deceased, and John S. Sorenson and Thorleif S. B. Nielsen as surviving partners of Crossman & Sielcken, against Germany and the firm of Theodor Wille, for the sum of $558,827 with interest thereon at the rate of 5% from the 1st day of April, 1918, to the date of payment, in the proceedings now pending before the Mixed Claims Commission United States and Germany, contained in List No. 6207, Docket No. 8304. 681

If the foregoing is in accord with your understanding of the terms of settlement above described, kindly indicate the same.

Very truly yours,

EARL B. BARNES
BRAINARD AVERY

682 *Exhibit W Annexed to Affidavit of Frank C. Sterck*

The foregoing is in accord with my understanding of the terms of settlement hereinabove described:

Arthur Garfield Hays

Zentral Einkaufsgesellschaft
by Arthur Garfield Hays
Atty.-in-Fact.

683 New York, 100 Broadway,
March 27, 1930

To Messrs. Brainard Avery
and Earl B. Barnes.

You are hereby authorized and directed to sign and deliver the foregoing letter.

CLARA SIELCKEN SCHWARZ
by ALEX WENDROTH SIELCKEN
Atty-in-fact.

684 Approved
Irving Trust Company
By Orrin R. Judd,
Vice President
As Executor of the Will
of Hermann Sielcken, dec.

Exhibit X Annexed to Affidavit of Frank C. Sterek. 685

Copy of letter dated April 17, 1930, from O. R. Judd, Vice President of the Irving Trust Company, to Leonard B. Smith, attorney for the Irving Trust Company.

Petr's Ex. 348
1-15-35 L.C.

IRVING TRUST COMPANY, NEW YORK

April 17th, 1930.

686

Leonard B. Smith, Esq.,
128 Broadway,
New York City.

Estate of Hermann Sielcken

Dear Mr. Smith:

On April 10th we wrote you that Mr. Avery had informed us that the Central Hanover Bank & Trust Company had received a sealed package which he believed contained the check and bonds which the government is paying in settlement of the judgment in the suit against Germany and the Z. E. G. The sealed package is held subject to the joint order of Brainard Avery and Arthur Garfield Hays. Mr. Avery informs us that it contains $459,200 face value United States Treasury Notes 3 1/2% due 1930 and Treasury Warrant for $267,481.40 in the name of John S. Sorenson and Thorleif S. B. Nielsen (individually and not as liquidators of Crossman & Sielcken in liquidation). 687

Mr. Avery also tells us that the award by the Mixed Claims Commission in the claim based on the German bond purchase will probably be made next Monday, April 21st, at Washington, in the amount of $558,000, with interest at 5% from April 1st, 1918.

Mr. Avery having made the suggestion that he thought Mr. Hotchkiss would be very helpful in getting the money and securities paid over to the Estate, avoiding the danger of threatened litigation and consequent delay, conferred with Mr. Hotchkiss and on April 10th Mr. Hotchkiss cabled Mrs. Schwarz as follows:

688 *Exhibit X Annexed to Affidavit of Frank C. Sterck*

"For the protection of the late recoveries Avery suggests that he be retained as counsel by Irving as executor and for me to be associated with him in that retainer stop Avery's attitude is that his prior retainer will be fulfilled when all moneys are received and his thought is that they should be paid to Irving without passing through the hands of Sorenson liquidator who is now demanding possession of the funds stop Irving undoubtedly will retain Avery and myself if you
689 request stop Will this interfere with Leonard Smith's relations to you or the Irving stop Confer with Alex cable answer"

to which Mr. Hotchkiss received the following reply from Mrs. Schwarz:

"Hotchkiss join Avery naturally both confer Smith stop Avery's opinion right stop Get Warrens advice also Nielsen if advisable stop Other partner in bad hands stop Leaving for Rome Hotel Russie always cable Alex important business regards to you and all gentlemen"

690 We also received the following cable from Mrs. Schwarz:

"Paris 21 12 0230
LCD Irving Trust 60 Broadway New York City
Judd kindly employ Hotchkiss and Avery for estate please answer Alex regards
CLARA SIELCKEN SCHWARZ"

We have accordingly asked Mr. Avery and Mr. Hotchkiss to represent the estate as counsel in connection with these recoveries and undoubtedly they will shortly confer with you about them.

Very truly yours,

O. R. JUDD
Vice President.

MP
CC to Mr. Avery
Mr. Hotchkiss

COPY

Exhibit Y Annexed to Affidavit of Frank C. Sterck. 691

Letter dated April 24, 1930, from Brainard Avery to Messrs. Crossman & Sielcken in Liquidation, Mr. John S. Sorenson and Mr. Thorleif S. B. Nielsen, Liquidators.

Petr's Ex 346
1-15-35
L.C.

April 24, 1930

Messrs. Crossman & Sielcken in Liquidation,
Mr. John S. Sorenson and 692
Mr. Thorleif S. B. Nielsen, Liquidators.

Gentlemen:

I have to report the proceedings yesterday at the Irving Trust Company, Trust Department, 60 Broadway.

There were present the following:

Crossman & Sielcken in Liquidation, represented by Mr. John S. Sorenson and Mr. Thorleif S. B. Nielsen, liquidators, also by Mr. Avery, counsel for the liquidation;

Estate of Hermann Sielcken, represented by Irving Trust Company, executor (Mr. Orrin R. Judd), also by 693
Mr. Avery and Mr. Charles E. Hotchkiss, counsel for the estate;

Mr. John S. Sorenson, an alleged creditor, represented by Mr. Neilson Olcott and Mr. Weinstein, counsel;

Mr. Thorleif S. B. Nielsen, represented by Mr. Charles L. Woody and Mr. Kellegrew, counsel.

Zentral-Einkaufsgesellschaft, represented by Mr. Arthur Garfield Hays and Mr. Wm. Abramson.

Theodor Wille, represented by Mr. Nielsen, its New York Agent.

Mrs. Clara Sielcken Schwarz, distributee of the Sielcken Estate, and alleged creditor of the liquidation, represented by Mr. Avery and Mr. Hotchkiss, counsel.

Mr. Earl B. Barnes, Mr. George W. Alger and Mr. George O. Castell, represented the lawyers who had conducted the litigation on behalf of Crossman & Sielcken

694 *Exhibit Y Annexed to Affidavit of Frank C. Sterck*

in Liquidation, Irving Trust Company, executor, and Mrs. Clara Sielcken-Schwarz.

Mr. Avery presented to the meeting the following:

(1) Certified copy of decision of German Mixed Claims Commission, whereby "the Government of Germany is obligated to pay to the Government of the United States on behalf of Columbia Trust Company (now Irving Trust Company) as Executor of the
695 Last Will and Testament of Herman Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Crossman and Sielcken, American Nationals, the sum of Five Hundred fifty-eight thousand eight hundred twenty-seven dollars and eighty-five cents ($558,827.85), together with interest thereon at the rate of five per cent per annum from April 1, 1918, to date of payment." $558,827.85

696 (2) U. S. Treasury Notes, 3½%, 1932 par 459,200.00

(3) U. S. Treasury Warrant to order of John S. Sorenson and Thorleif S. B. Nielsen, individually, 267,481.40

(4) Statement of the Alien Property Custodian, dated April 3, 1930, transmitting the funds described in (2) and (3) above, and also to the effect that 21 days accrued interest at 3½% on $459,200 was represented by immature coupons attached to the Treasury Notes, in the amount of 937.53

(5) Photostat letter of settlement, Earl B. Barnes and Brainard Avery to Arthur Garfield Hays, dated March 27, 1930, which settlement had previously been approved by Mrs. Clara Sielcken-

Schwarz and by Irving Trust Company, executor of the will of Hermann Sielcken.

Mr. Hays, representing Zentral-Einkaufsgesellschaft, and Mr. Avery, representing the Sielcken interests, agreed that pursuant to the terms of the letter of March 27, 1930, there had been collected from the Alien Property Custodian and the U. S. Treasury, the following:

U. S. Treasury Notes	$459,200.00
Accrued interest, 3½% 3/15/30/4/5/30 (21 days)	937.53
Cash	267,481.40
Total	$727,618.93

698

of which Zentral-Einkaufsgesellschaft, by its attorney, Mr. Hays, was entitled to one-half.

This one-half was delivered to Mr. Hays, attorney for Z. E. G., by his receiving the following:

2 U. S. Treasury Notes, C-7343 D-7344	$200,000.
2 U. S. Treasury Notes, J-70789 K-70790	20,000.
1 U. S. Treasury Note F-23216	5,000.
4 U. S. Treasury Notes, E-77625 F-77626 G-77627 H-77628	4,000.
2 U. S. Treasury Notes, $100. each	200.
Cash	134,140.70

699

The total amount received by Mr. Hays, as attorney for Z. E. G., is $363,340.70 which is one-half of $726,681.40.

700. *Exhibit Y Annexed to Affidavit of Frank C. Sterck*

The item of 21 days interest on $459,200, amounting to $937.53, was accounted for by the fact that the immature coupons were attached to the $229,200 of Treasury Notes received by Mr. Hays.

Messrs. Sorenson and Nielsen endorsed the U. S. Treasury Warrant drawn to their order, in the amount of $267,481.40, and deposited the same to the order of Crossman & Sielcken in Liquidation with the Irving Trust Company, as bank and not as executor. Checks drawn by the liquidators are to be countersigned by the
701 Irving Trust Co.

The settlement of March 27, 1930 provided, among other things, that the claim of Theodor Wille against Crossman & Sielcken in Liquidation, and/or Estate of Hermann Sielcken, and/or Mrs. Clara Sielcken-Schwarz, and/or Zentral-Einkaufsgesellschaft, should be finally settled by the credit of the sum of $100,000 in favor of Theodor Wille Santos with the J. Henry Schroder Banking Corporation, 46 William Street.

This sum of $100,000 was contributed, $50,000 by Zentral Einkaufsgesellschaft and $50,000 by Crossman & Sielcken in Liquidation.

In addition to the Treasury Notes above mentioned and
702 delivered to Mr. Hays, attorney for Z. E. G. ($229,200 par), Mr. Hays was entitled to receive from Crossman & Sielcken in Liquidation the sum of $134,140.70, but as Z. E. G. was obligated to make the payment of $50,000 to the credit of Theodor Wille & Co. Santos, this $50,000 was deducted from the sum of $134,140.70, and a check was issued by Crossman & Sielcken in Liquidation, signed by John S. Sorenson and Thorleif S. B. Nielsen, liquidators, to the order of Arthur Garfield Hays, attorney, in the sum of $84,040.70.

The $50,000 to be paid to Theodor Wille & Co. Santos by Crossman & Sielcken in Liquidation was paid by check for $100,000, issued by Crossman & Sielcken in Liquidation, John S. Sorenson and Thorleif S. B. Nielsen, liquidators, to order of Arthur Garfield Hays, attorney. This check for $100,000 was composed of $50,000

deducted from and contributed by Z. E. G., as above stated, and $50,000 contributed by Crossman & Sielcken in Liquidation.

The expense of safe-keeping, insurance and transmitting the securities above mentioned from Washington and in New York, amounted to $200, which it was agreed should be evenly divided between Z. E. G. and C. & S. in Liq.

At the close of this transaction, there remains on hand in possession of Crossman & Sielcken in Liquidation, subject to countersignature of Irving Trust Co., the following: 704

U. S. Treasury Notes, 3½%, 1932 with September 15th coupons attached			$230,000.
Cash			83,340.70
Total cash received from APC		$267,481.40	
Amt. paid Wille by Z. E. G.	$50,000.		
Amt. paid Wille by C. & S.	50,000.		
Amt. paid Wille by Hays, Atty. for Z. E. G.	84,040.70		705
Bank charges	100.00	184,140.70	
		$ 83,340.70	
Total U. S. Bonds and Cash, April 24th			$313,340.70

In addition to the foregoing, general releases were exchanged as follows:

General releases from Zentral-Einkaufsgesellschaft:

(a) To Estate of Georg Georgius, Estate of Gustav Diederichsen, Carl Isenberg and Richard Isenberg, as executors of the codicil to the Last Will and Testament of Hermann Sielcken, deceased, dated February 18, 1917.

706 *Exhibit Y Annexed to Affidavit of Frank C. Sterck*

(b) To Clara Sielcken Schwarz as sole beneficiary of the residuary estate of Hermann Sielcken deceased.

(c) To Columbia Trust Company (now Irving Trust Company) as executor of the Last Will and Testament of Hermann Sielcken deceased.

(d) To John S. Sorenson, as surviving and liquidating partner of the Firm of Crossman & Sielcken.

707 General releases running to Zentral-Einkaufsgesellschaft:

(a) A general release from Clara Sielcken Schwarz as sole beneficiary of the residuary estate of Hermann Sielcken deceased.

(b) A general release from Columbia Trust Company (now Irving Trust Company) as executor of the Last Will and Testament of Hermann Sielcken deceased.

(c) A general release from John S. Sorenson as surviving and liquidating partner of the firm of
708 Crossman & Sielcken.

(d) A general release from Carl Isenberg and Richard Isenberg as executors of the codicil to the Last Will and Testament of Hermann Sielcken, deceased, dated February 18, 1917.

General releases from Theodor Wille:

(a) To Estate of Georg Georgius, Estate of Gustav Diederichsen, Carl Isenberg and Richard Isenberg, as executors under the codicil of the Last Will and Testament of Hermann Sielcken deceased, dated February, 18, 1917.

(b) To Clara Sielcken Schwarz, individually and as sole beneficiary of the residuary estate of Hermann Sielcken, deceased.

(c) To Columbia Trust Company (now Irving Trust Company) as executor of the Last Will and Testament of Hermann Sielcken deceased.

(d) To John S. Sorenson as surviving and liquidating partner of the firm of Crossman & Sielcken.

General releases to Theodor Wille:

(a) A general release from Clara Sielcken Schwarz, individually and as sole beneficiary of the residuary estate of Hermann Sielcken deceased.

(b) A general release from Columbia Trust 710
Company (now Irving Trust Company) as executor of the Last Will and Testament of Hermann Sielcken deceased. Said release shall also specifically release Theodor Wille of and from any and all claims of the Columbia Trust Company (now Irving Trust Company) more particularly set forth in the memorial or memorials for claim now pending before the Mixed Claims Commission, List No. 6207, Docket No. 8304.

(c) A general release from John S. Sorenson as surviving and liquidating partner of the firm of 711
Crossman & Sielcken. Said release shall also specifically release Theodor Wille of and from any and all claims of John S. Sorenson more particularly set forth in the memorial or memorials for claim now pending before the Mixed Claims Commission, List No. 6207, Docket No. 8304.

(d) A general release from Carl Isenberg and Richard Isenberg as executors of the codicil to the Last Will and Testament of Hermann Sielcken deceased, dated February 18, 1917.

A/B

Very truly yours,

BRAINARD AVERY

712 **Exhibit Z Annexed to Affidavit of Frank C. Sterck.**

Judgment entered in the New York Supreme Court for the County of New York on the 11th day of November, 1933, upon the report of Referee Henry F. Wolff, in an action brought by the Chase National Bank of the City of New York, as Ancilliary Executor of the Last Will and Testament of Thorleif S. B. Nielsen, deceased, against John S. Sorenson, Irving Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, Clara Sielcken Schwarz, and others.

713 NEW YORK SUPREME COURT

COUNTY OF NEW YORK

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Ancilliary Executor of the Last Will and Testament of Thorleif S. B. Nielsen, deceased,

Plaintiff,

against

JOHN S. SORENSON, IRVING TRUST COMPANY, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, CLARA SIELCKEN-SCHWARZ, GEORGE U. KIRKPATRICK, JAMES W. SMITH, TERI-JOHN WEITLING, JOHN F. BUDELMAN, MAURICE J. ELFENBEIN, and all other persons who have or who claim to have any interest whatever in the assets of CROSSMAN & SIELCKEN, which persons, if any there be, and their names are unknown to plaintiff,

714

Defendants.

The issues in the above entitled action having been duly referred to Henry F. Wolff, Esq., an attorney at law of the Borough of Manhattan, New York City, as referee, to hear and determine, by an order granted and entered herein on the 18th day of December, 1931 on the consent of all the parties who have appeared herein and it having been further provided by the terms of said order that in the event an accounting was decreed be-

tween any of the parties hereto, the said referee should take and state the account so far as possible between the parties who have appeared and in his report award, subject to certain limitations in said order contained, the final judgment to be entered and said referee having taken his oath of office and the issues in the cause having been regularly brought on for trial before said referee at his office, No. 52 William Street in said Borough and City on the 23rd day of December, 1931 and on various dates thereafter at said referee's office, No. 90 Broad Street, in said Borough and City and the 716
plaintiff having appeared by Chadbourne, Stanchfield & Levy, its attorneys, and the defendant, John S. Sorenson, by Tibbetts, Lewis & Rand, his attorneys, the defendant Irving Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, Deceased by Leonard B. Smith its attorney and Selden Bacon its counsel, and the defendant, Clara Sielcken-Schwarz by Avery & Whiting, her attorneys and the defendants George U. Kirkpatrick, James W. Smith, Terijon Weitling, John F. Budelman and Maurice J. Elfenbein not having been served with the summons and not having appeared herein and one Frank H. Stewart (mentioned in the answer 717
of said Irving Trust Company, as Executor as aforesaid) not having been made a party defendant herein and said order having further provided that the trial of the rights of the parties to this action who have appeared herein might nevertheless proceed and the referee having heard the allegations and proofs of the parties so appearing and after due deliberation, having duly made and filed his decision on the 29th day of June 1933, containing a statement of the facts found and his conclusions of law thereon, and directing judgment as hereinafter stated, and the costs of the defendant Irving Trust Company as Executor of the Last Will and Testament of Hermann Sielcken, Deceased and of the defendant Clara Sielcken-Schwarz having been duly taxed and adjusted at the sums of $1090 60/100 and $1091 04/100 respectively:

718 *Exhibit Z Annexed to Affidavit of Frank C. Steck*

NOW, on motion of Avery & Whiting, attorneys for said defendant, Clara Sielcken-Schwarz, it is

ADJUDGED that upon the death of said Hermann Sielcken on October 8th, 1917, by virtue of the terms of a certain partnership agreement dated June 2nd, 1913 (a copy of which is attached to the complaint herein) between said Sielcken and said John S. Sorenson and said Thorleif S. B. Nielsen and by virtue of the terms of said Sielcken's will dated March 23rd, 1914, and admitted to probate by the Surrogate's Court of the County of New York on the 26th day of January 1918, the sole right to liquidate the partnership assets and property of the firm of Crossman & Sielcken was vested in the executor named in said will, now said defendant Irving Trust Company, and under the terms of said instruments no other person was lawfully entitled to be such liquidator. It is further

719

ADJUDGED that neither the plaintiff's testator, Thorleif S. B. Neilsen nor said defendant John S. Sorenson is now or at any time since the dissolution of said firm of Crossman & Sielcken by the said death of said Hermann Sielcken on October 8th, 1917 has been a liquidating partner thereof; that neither the plaintiff, as executor of the last will and testament of said Thorleif S. B. Nielsen, deceased, nor said defendant, John S. Sorenson is entitled to any payment in addition to that heretofore received for their respective shares or interest in the business, profits and assets of said firm; that neither of them is entitled to compensation in addition to that heretofore paid for services in connection with the liquidation and settlement of the business and affairs of said firm, and that neither of them is entitled to file an account herein. It is further

720

ADJUDGED that said Irving Trust Company, as executor of the last will and testament of Hermann Sielcken, deceased is entitled to the sole custody and possession of all the property and assets of every kind of said firm of Crossman & Sielcken, in liquidation. It is further

ADJUDGED that said Irving Trust Company, as executor as aforesaid, is entitled to have delivered to it by the plaintiff herein and said defendant, John S. Sorenson, all property of every kind and description belonging to said firm of Crossman & Sielcken in liquidation, and now or hereafter, in whole or in part, in their possession or control or in the possession or control of either one of them, including all monies and securities heretofore received and deposited with said Irving Trust Company as bank and not as executor, to the credit of the special account known as Crossman & Sielcken in liqui- 722
dation, and to have signed, executed and delivered by said Sorenson and by said plaintiff as executor of the will of said Nielsen, and each of them, from time to time, such instruments in writing as may be necessary to effectuate such transfer and delivery: It is further

ADJUDGED that the plaintiff herein and said John S. Sorenson have no right, claim, title or interest in and to such balance as may now remain unpaid of a certain compromise award granted by the Mixed Claims Commission, United States and Germany in a certain proceeding (known by the docket number 8304 and by the list number 6207) entitled "United States of America
on behalf of Columbia Trust Company (now the Amer- 723
ican Exchange Irving Trust Company), as executor of the last will and testament of Hermann Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Crossman & Sielcken, vs. Germany, and the firm of Theodor Wille, impleaded," and said Irving Trust Company, as executor as aforesaid, is entitled to have any unpaid balance of said award paid to it by proper instruments in writing drawn to its sole order as executor of the last will and testament of Hermann Sielcken, deceased, without interference on the part of the plaintiff herein or said John S. Sorenson or either one of them. It is further

ADJUDGED that said defendant Irving Trust Company, as executor of the last will and testament of Her-

724 *Exhibit Z Annexed to Affidavit of Frank C. Sterck*

mann Sielcken, deceased, has the sole right to collect any further warrants of the United States Treasury issued in payment of said award and made payable to the joint order of said Irving Trust Company as executor of the last will and testament of Hermann Sielcken, deceased, Thorleif S. B. Nielsen and John S. Sorenson, and for this purpose to have the same promptly endorsed over to it by the plaintiff as executor as aforesaid, and its successor, if any, and by the defendant Sorenson, or in case of his death, by his personal representative or
725 representatives. It is further

Adjudged that the settlement with said John S. Sorenson and with said Thorleif S. B. Nielsen arrived at by said firm of Crossman & Sielcken in liquidation on or about the 23rd day of December, 1917 was intended by the parties thereto to be and was in fact, a complete and final settlement by virtue of which the plaintiff's testator and said Sorenson each accepted the sum then paid to him in full settlement of all claims to the assets of said firm of Crossman & Sielcken and the profits of said partnership, whether realized or to be realized in the future; that said settlements with plaintiff's testa-
726 tor and with said Sorenson were as to each of them a full accord and satisfaction of all of their respective claims to share in the assets and profits of said firm; that said settlements constitute a bar to any claim by either of them to share in the recovery by said firm of Crossman & Sielcken for the Copenhagen cargoes seized by the British Naval authorities and under the compromise award granted by said Mixed Claims Commission in said proceeding known by the docket number 8304 and by the list number 6207, and entitled "United States of America on behalf of Columbia Trust Company (now the American Exchange Irving Trust Company) as executor of the last will and testament of Hermann Sielcken, deceased, and John S. Sorenson and Thorleif S. B. Nielsen, surviving partners of the firm of Cross-

man & Sielcken, vs. Germany, and the firm of Theodor Wille, impleaded." It is further

ADJUDGED that the defendant Sorenson is not entitled to account as liquidating partner of said firm of Crossman & Sielcken. It is further

ADJUDGED that the complaint herein be and the same hereby is dismissed on the merits as to the defendant Irving Trust Company, as executor of the last will and testament of Hermann Sielcken, deceased, and as to the defendant, Clara Sielcken-Schwarz, with costs to each of them, and that said defendant Irving Trust 728
Company, as executor as aforesaid, recover of the plaintiff herein, the sum of $1090 60/100 Dollars, its costs as taxed, and that the said defendant, Clara Sielcken-Schwarz, recover of said plaintiff the sum of $1091 04/100 Dollars, her costs as taxed. It is further

ADJUDGED that the first and second counterclaims of said defendant Sorenson, contained in his amended reply to the answer herein of the defendant Irving Trust Company as executor as aforesaid, be and they hereby are dismissed as to said defendant Irving Trust Company as such executor and as to said defendant Clara Sielcken-Schwarz. It is further 729

ADJUDGED that said defendant Irving Trust Company, as executor as aforesaid, is entitled to account herein and it is hereby ordered and directed to prepare and file with the said Henry F. Wolff referee herein within thirty days after the service upon it of a copy of this judgment with notice of entry, an account of all its acts and transactions as liquidator of said firm of Crossman & Sielcken, in liquidation, not embraced in the accounting proceeding heretofore instituted by it in the Surrogates' Court for the County of New York, entitled "In the Matter of the Judicial Settlement of the Account of the Columbia Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, de-

730 *Exhibit Z Annexed to Affidavit of Frank C. Sterck*

ceased," in which a decree was entered in said Court on the 8th day of July, 1921. It is further

ADJUDGED that said defendant, Irving Trust Company, as executor as aforesaid, and said defendant, Clara Sielcken-Schwarz may respectively from time to time, apply for further relief at the foot of this judgment, not inconsistent herewith.

Judgment this 11th day of November, 1933.

DANIEL E FINN
Clerk

731

The foregoing judgment is hereby approved as to form.

Dated: New York, November 8th 1933

HENRY F. WOLFF
Referee.

3.80 (2)
11/15/33
B. G.

732

Exhibit Z Annexed to Affidavit of Frank C. Sterck 733

NEW YORK SUPREME COURT

COUNTY OF NEW YORK

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Ancillary Executor of the Last Will and Testament of Thorleif S. B. Nielsen, deceased,

Plaintiff,

against

734

JOHN S. SORENSON, IRVING TRUST COMPANY, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, CLARA SIELCKEN-SCHWARZ, *et al.*,

Defendants.

Judgment on Report of Referee.

Filed November 11, 1933

At 11 o'clock & 15 M AM

735

AVERY & WHITING
Attorneys for Defendant
Clara Sielcken-Schwarz,
100 Broadway
Borough of Manhattan
New York City

28047/31 (513) 2 aa

xx

44323

736 *Exhibit Z Annexed to Affidavit of Frank C. Sterck*

Due and timely service of a copy of the within
is hereby admitted this day of 193 .

Attorney for

Please take notice that
of which the within is a copy was duly entered and filed in the office of the Clerk of the County of
737 on 193 .

AVERY & WHITING
Attorneys for
100 Broadway
Borough of Manhattan
New York City

To

Attorney for

738 Please take notice that a
of which the within is a copy will be presented for settlemen and signature to the Hon.
a Justice of the within named Court, at
in the Court House of said Court, in the Borough of City of New York, on the day of 193 at o'clock in the noon of said day.

Dated, New York, 193 .

AVERY & WHITING
Attorneys for
100 Broadway
Borough of Manhattan
New York City

To

Attorney for

Exhibit AA Annexed to Affidavit of Frank C. Sterck. 739

Final Judgment dated November 8, 1937 upon the judgment entered in the New York Supreme Court for the County of New York on November 11, 1933, in the action brought by the Chase National Bank of the City of New York, as Ancillary Executor of the Last Will and Testament of Thorleif S. B. Nielsen, deceased, against John S. Sorenson, Irving Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, Clara Sielcken Schwarz, and others.

SUPREME COURT 740

NEW YORK COUNTY

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Ancillary Executor of the Last Will and Testament of Thorleif S. B. Nielsen, deceased,
Plaintiff,

against

JOHN S. SORENSON, IRVING TRUST COMPANY, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, CLARA SIELCKEN-SCHWARZ, GEORGE U. KIRKPATRICK, JAMES W. SMITH, TERIJON WEITLING, JOHN F. BUDELMAN, MAURICE J. ELFENBEIN, and all other persons who have or who claim to have any interest whatever in the assets of CROSSMAN & SIELCKEN, which persons, if any there be, and their names are unknown to plaintiff,
Defendants.

Index No. 28047-1931

Final Judgment 741

Upon the judgment herein entered on the 11th day of November, 1933 and pursuant to the order of this court in this matter, of date the 1st day of ~~October~~ *November* 1937,

NOW, on motion of Leonard B. Smith, attorney for the defendant Irving Trust Company as executor of the

742 *Exhibit AA Annexed to Affidavit of Frank C. Sterck*

last will and testament of Hermann Sielcken, deceased, it is

ADJUDGED that the account of the defendant Irving Trust Company as Executor of the last Will and Testament of Hermann Sielcken, deceased, dated December 11th, 1933, (of all its acts and transactions as liquidator of the firm of Crossman & Sielcken in liquidation not embraced in the accounting proceeding heretofore instituted by it in the Surrogate's Court for the County of New York, entitled "In the Matter of the Judicial
743 Settlement of the Account of the Columbia Trust Company as Executor of the last Will and Testament of Hermann Sielcken, deceased," in which accounting proceeding a decree was entered in said Surrogate's Court on the 8th day of July, 1921, down to and including the 9th day of December, 1933), be and the same hereby is in all respects approved and confirmed, without costs; and it is further

ADJUDGED THAT THE DEFENDANT Irving Trust Company as Executor of the last Will and Testament of Hermann Sielcken, deceased, has duly accounted for all its acts and transactions as liquidator of the firm
744 of Crossman & Sielcken in liquidation not embraced in the accounting proceeding heretofore instituted by it in the Surrogate's Court for the County of New York, entitled "In the Matter of the Judicial Settlement of the Account of the Columbia Trust Company as Executor of the last Will and Testament of Hermann Sielcken, deceased," in which a decree was entered on the 8th day of July, 1921, down to and including the 9th day of December, 1933, and that the state and condition of said account as of the 9th day of December, 1933, are set forth in the following summary thereof now finally allowed, to wit:

Said defendant as such liquidator is charged with:

Schedules 1, 2 and 2 (a) of Exhibit A, annexed to said account	$4,489,754.99

Exhibit AA Annexed to Affidavit of Frank C. Sterck 745

Schedules 1 and 2 of Exhibit E, annexed to said account		2,562,039.92
Schedules 1 and 2 of Exhibit G, annexed to said account		443,165.43
Receipts after March 18, 1927:		
Cash	$896,264.52	
United States Treasury Notes	230,000.00	1,126,264.52
		$8,621,224.86
and Unpaid Balance of Award of Mixed Claims Commission—United States and Germany		Value unknown

746

Said defendant as such liquidator is credited with:

Schedules 1, 2 and 2 (a) of Exhibit A, annexed to said account	$4,489,754.99	
Schedules 1 and 2 of Exhibit E, annexed to said account	2,562,039.92	
Schedules 1 and 2 of Exhibit G, annexed to said account	443,165.43	

747

Disbursements after March 18, 1927:			
Cash	$786,166.46		
United States Treasury Notes	230,000.00		
		1,016,166.46	$8,511,126.80
Leaving a balance on hand of			$ 110,098.06
and said unpaid balance of Award of Mixed Claims Commission—United States and Germany			Value unknown

748 *Exhibit AA Annexed to Affidavit of Frank C. Sterck*

And it is further

ADJUDGED that the defendant Irving Trust Company as such liquidator, in its capacity as executor of said Hermann Sielcken, deceased, was authorized to transfer to itself, as such executor, the sum of $230,000 of United States Treasury notes; to pay to itself, as such executor, the cash sum of $300,357.72; to pay to itself, as such executor, the stated balance of $110,098.06, and to transfer to itself, as such executor, the unpaid balance, of unknown value, of the Award of Mixed Claims
749 Commission—United States and Germany—all as shown in said account; and it is further

ADJUDGED that, upon such transfer to itself, as such executor, of the said sum of $230,000 of United States Treasury notes; the payment to itself, as such executor, of the said respective sums of $300,357.72 and of $110,098.06, and the transfer to itself, as such executor, of the said balance, of unknown value, of said Award of Mixed Claims Commission—United States and Germany—the Irving Trust Company be and it hereby is discharged of and from all liability for all of its acts and transactions as liquidator of the firm of Crossman
750 & Sielcken as stated in said account, and charged with the said sum of $230,000 of United States Treasury Notes; the said respective sums of $300,357.72 and of $110,098.06, and the unpaid balance of such Award, as such executor, to be accounted for by it, as such executor, as of the date of receipt thereof respectively, in due course, before the Surrogate for New York County or other tribunal having jurisdiction.

Dated November 8, 1937

ALBERT MARINELLI
Clerk

Certified copy Issued
Fee paid 1.20
Date 11/8/37
County Clerk N. Y. Co.
By M.
Judg. 11 page 346.

28047-1931

SUPREME COURT OF THE STATE OF NEW YORK

NEW YORK COUNTY

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Ancillary Executor of the Last Will and Testament of THORLEIF S. B. NIELSEN, deceased,

Plaintiff,

against 752

JOHN S. SORENSEN, IRVING TRUST COMPANY, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, CLARA SIELCKEN-SCHWARZ, GEORGE U. KIRKPATRICK, JAMES W. SMITH, TERIJON WEITLING, JOHN F. BUDELMAN, MAURICE J. ELFENBEIN, and all other persons who have, or who claim to have, any interest whatever in the assets of CROSSMAN & SIELCKEN, which persons, if any there be, and their names are unknown to plaintiff, 753

Defendants.

Final Judgment.

Filed November 8, 1937 at 2 o'clock & 20 m P. M.

LEONARD B. SMITH,
Attorney for Defendant Irving Trust Company as Executor of the Last Will and Testament of Hermann Sielcken, deceased,
230 Park Avenue,
New York City.

Fee Paid $4.50
Stub No. 15724
Nov 8 1937
County Clerk N. Y. Co.
By: G
Cashier

Judg 11 Page 347

Recorded
Photostat Div.
Nov 1937
By.....

754 **Exhibit BB Annexed to Affidavit of Frank C. Sterck.**

Release of Thorleif S. B. Nielsen to the firm of Crossman & Sielcken.

Respondent Irving Trust Co. Exhibit No. 10280.

5/31/35 L. C.

GENERAL RELEASE.

755 To All to Whom These Presents Shall Come or May Concern,

Greeting: Know Ye, That I, Thorleif S. B. Nielsen, of Hackensack, N. J., member of the firm of Crossman & Sielcken, now in liquidation, for and in consideration of the sum of One hundred and Twenty Thousand Seven hundred Twenty-four & 28/100 dollars ($120724.28), lawful money of the United States of America to me in hand paid by the Firm of Crossman & Sielcken in Liquidation, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged, and by these presents do for myself, my heirs, executors and administrators, remise, release and forever discharge the said
756 Firm of Crossman & Sielcken, its successors and assigns, and the members thereof and their several heirs, executors and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against them or any of them, I ever had, now have or which my heirs, executors or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

In consideration of the receipt of the afore-mentioned payment, I hereby agree that, should any amount be

awarded to me, individually, by any Prize Court or otherwise, on account of goods shipped during the year 1915 and seized by the British Naval Authorities, I will pay all such amounts forthwith to the Columbia Trust Co. as Executor of the Estate of Hermann Sielcken, Deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 22nd day of December in the year one thousand nine hundred seventeen.

THORLEIF S. B. NIELSEN

Sealed and delivered in the presence of 758
BERNARD ROSENTHAL

State of New York
County of New York, ss:

On this 22nd day of December, 1917 before me personally appeared Thorleif S. B. Nielsen, to me known, and known to me to be the same person described in and who executed the within instrument and he acknowledged to me that he executed the same.

BERNARD ROSENTHAL
Commissioner of Deeds, City of New York,
Residing in Kings County. 759
Certificates Filed in New York and Kings Counties.
N. Y. County Clerks No. 226 Register No. .....
My Commission Expires Oct. 17, 1918

(Seal.)

760 **Exhibit CC Annexed to Affidavit of Frank C. Sterck.**

Release of John S. Sorenson to the firm of Crossman & Sielcken.

Respondent Irving Trust Co. Exhibit No. 10279.

5/31/35 L. C.

GENERAL RELEASE.

761 To All to Whom These Presents Shall Come or May Concern,

Greeting: Know Ye, That I, John S. Sorenson, member of the firm of Crossman & Sielcken, now in liquidation, for and in consideration of the sum of One hundred and Twenty Thousand Seven hundred Twenty-four & 28/100 dollars ($120724.28), lawful money of the United States of America to me in hand paid by the Firm of Crossman & Sielcken in Liquidation, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged, and by these presents do for myself, my heirs, executors and administrators, remise, release and forever
762 discharge the said Firm of Crossman & Sielcken, its successors and assigns, and the members thereof and their several heirs, executors and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against them or any of them, I ever had, now have or which my heirs, executors or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

In consideration of the receipt of the afore-mentioned payment, I hereby agree that, should any amount be awarded to me, individually, by any Prize Court or otherwise, on account of goods shipped during the year 1915

and seized by the British Naval Authorities, I will pay all such amounts forthwith to the Columbia Trust Co. as Executors of the Estate of Hermann Sielcken, Deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the 22nd day of December in the year one thousand nine hundred seventeen.

JOHN S. SORENSON

Sealed and delivered in the presence of
BERNARD ROSENTHAL

764

State of New York,
County of New York, ss:

On this 22nd day of December 1917 before me personally appeared John S. Sorenson, to me known, and known to me to be the same person described in and who executed the within instrument and he acknowledged to me that he executed the same.

BERNARD ROSENTHAL
Commissioner of Deeds, City of New York,
Residing in Kings County.
Certificates Filed in New York and Kings Counties.
N. Y. County Clerks No. 226 Register No..... 765
My Commission Expires Oct. 17, 1918

(Seal.)

766 **Exhibit DD Annexed to Affidavit of Frank C. Sterck.**

Opinion of Surrogate Foley, handed down April 21, 1938, on application of the Attorney-General to intervene in the Judicial Proceedings of the Estate of Hermann Sielcken, deceased.

(Copy.)

(FOLEY, S.)

767 Filed April 21, 1938.

Estate of Hermann Sielcken.

The Attorney-General of the United States as successor to the Alien Property Custodian moves for leave to intervene in the pending accounting proceeding of the Irving Trust Company as executor of Hermann Sielcken. In addition, he asks leave to file objections to the account and prays for other relief incidental to the preservation of the rights of the Federal Government.

The application is granted in its entirety. The present
768 action of the Attorney-General appears to have arisen out of the evidence developed in the very bitter litigation in a proceeding to vacate prior decrees of this court judicially settling the accounts of the executor. The widow of the decedent sought to reopen these decrees as a basis of attack upon the conduct of the executor. Her application was denied in my decision in Matter of Sielcken (162 Misc. 54). Hermann Sielcken died in Germany in 1917 after the entrance of the United States into the World War. He had lived there for some years, although he apparently retained his American citizenship. His wife was the chief beneficiary and residuary legatee under his will. She had sojourned with her husband in Germany, was with him at the time of his death and came to America some months after the war terminated.

Pursuant to the powers conferred by the Trading With the Enemy Act and under the Executive Orders of the

President, the Alien Property Custodian as his delegate several years ago made demands for the payment of certain individual property interests of Sielcken, his interest in the partnership of Crossman & Sielcken, wholesale coffee merchants, the interest of his wife in the estate of her husband and the further interest in such part of the property which might be transmitted from this country to Germany to the German executors appointed in the will. The provisions of the Trading With the Enemy Act applied not only to enemy aliens, but to citizens of the United States resident in enemy countries (Sec. 2, 770
40 U. S. Stat. at Large 411; Chap. 106 as amended; Noble v. Great American Ins. Co., 200 App. Div. 773). In 1921, Attorney-General Daugherty, under his powers, released any interest of the United States Government in the estate generally, or in the legacy of the widow. He also permitted the payment to the estate of certain funds deposited with the Custodian from the partnership assets.

The controversy between the executor and the widow in the proceeding for the vacatur of the decrees appears to have developed evidence as to the citizenship of Sielcken and as to the activities of him and his wife in their loyalty or disloyalty to our government immediately 771
prior and subsequent to the declaration of war on April 6, 1917. These disclosures led to the recent demands made by the Attorney-General of the United States as the successor of the Custodian. On August 25, 1935, general power had been granted to the Attorney-General by an Executive Order of the President to revoke or vacate any order issued in favor of any claimant in pursuance of Section 9 of the Trading With the Enemy Act, which had been made or allowed without authority of law, or as a result of misrepresentations or fraud on the part of the claimant or a representative of the claimant, or by collusion with any officer or employee of the government. Authority to institute suit was granted by that order to the Attorney-General. Further authority was granted "to do any other lawful act, deemed necessary by him, for the purpose of claiming or recovering moneys and property

paid or delivered to any claimant." On January 6, 1938, the Attorney-General of the United States, by a formal instrument revoked the claims previously allowed by Attorney-General Daugherty in 1921 in respect of the estate and of the interest of the decedent in the liquidation of the partnership of Crossman & Sielcken and of the interest of the widow as beneficiary of the estate. By that instrument Attorney-General Cummings also vacated the previous orders directing payment and releasing the property which had been made the subject of demand or seizure. The grounds of his action as stated in the instrument are that the previous allowance of the claims was "without authority of law or as a result of fraud and misrepresentation made by the claimants therein or by their authorized representatives, agents or attorneys."

Counsel for the executor appear to have taken inconsistent and contradictory positions in their brief. On the one hand they state that they have no objection to the intervention of the Attorney-General or to his being permitted to file objections to the present account. On the other hand, they seek, in advance of the filing of the objections, to obtain permission from the Surrogate to litigate in this court the validity of the action of the President in making the Executive Order of 1935 and the validity of the subsequent action of the Attorney-General in revoking the allowances of the claims and the orders permitting the relinquishment or return of the funds to the estate or to the widow. The latter contentions have no place in this court.

In numerous decisions of the United States Supreme Court the status of the Alien Property Custodian and that of the Attorney-General as his successor have been defined and their power over the property or over an interest in property of a person classified as an enemy sustained (Central Union Trust Co. v. Garvin, 254 U. S. 554; Stoehr v. Wallace, 255 U. S. 239; United States v. Chemical Foundation, 272 U. S. 1; Henkels v. Sutherland, 271 U. S. 298; Woodson v. Deutsche, etc., 292 U. S. 449; Cummings v. Deutsche Bank, 300 U. S. 115).

In our own state there is similar finality in the recognition of the right of the Federal Government to demand and seize through the Executive Order of the President, supplemented by the demand of the Custodian, the property of enemies or those defined to be enemies by the Federal statutes (Miller v. Lautenburg, 239 N. Y. 132; Matter of Bendit, 214 App. Div. 446; Noble v. Great American Ins. Co., 200 App. Div. 773; Rothbarth v. Herzfeld, 179 App. Div. 865, aff'd 223 N. Y. 578; Matter of Schaefer, 112 Misc. 303).

The status of the Custodian has likewise been definitely fixed by our courts. The mere demand of the delegate of 776
the President made pursuant to the Trading With the Enemy Act is sufficient to give him a status as a person interested in an estate with complete possession of the legal and equitable rights of the enemy beneficiary. "The determination by the delegate of the President that the property is enemy owned has the same force as a like determination by the President himself. The determination, though not conclusive, has prima facie a validity that suffices to sustain a transfer of possession" (Cardozo, J., in Miller v. Lautenburg, *supra,* p. 136). If the determination is challenged as erroneous it may be contested and restitution sought by claim and suit in the appropriate Fed- 777
eral Court under the provisions of the Trading With the Enemy Act and its amendments (Central Union Trust Co. v. Garvan, *supra,* p. 567; Cummings v. Deutsche Bank, 300 U. S. 115).

While it is not material here, because of my determination that this court has no jurisdiction to inquire into the legality of the order of the Attorney-General revoking the prior allowance of claims, it should be noted that the power of the Attorney-General to so act was sustained by the United States Court of Appeals for the District of Columbia in Cummings v. Societe Suisse, 85 Fed. Rep. 2d 287, decided June 8th, 1936.

To clarify, therefore, the issues, present and prospective, in the pending proceeding I hold that this court may not inquire into (a) the validity of the Executive Order of the President or the legality of the demand of the Alien

778 *Exhibit DD Annexed to Affidavit of Frank C. Sterck*

Property Custodian or his successor, the Attorney-General, or (b) the circumstances which led the Alien Property Custodian or his successor to designate the person as an enemy, or (c) the nature of that person's conduct and whether treasonable or otherwise, or (d) the question raised by counsel for the executor as to whether fraud or misrepresentation actually led to the relinquishment by the Attorney-General in 1921 of the rights of the Government in the estate or in its assets or in the interest of Mrs. Sielcken as a residuary legatee. If the executor or the widow seeks to attack the legality of any of the
779 acts of which they now complain, they must resort to a Federal forum (People v. Hillman, 246 N. Y. 467, 481; Matter of Smathers, 249 App. Div. 523).

The Attorney-General will be granted until May 23rd, 1938, to serve and file objections to the account. The contentions of counsel for the executor as to the possible forms such objections may take, must be disregarded. It would be futile to speculate on the nature of these objections until they are filed. One of these contentions relates to the rights of the assignees of the widow of the funds on deposit with the Chase National Bank under the so-called letter agreement between the executor and the
780 bank dated February 3rd, 1931, by which certain funds of the estate were paid out by the executor for the account of the widow, but with provision for safekeeping and return to the corporate executor for reimbursement by it for estate obligations. If that question be raised by the objections, the rights of the assignees to share in the fund, as alleged innocent transferees, will not be tried and determined by the Surrogate. The assignees will have to proceed as claimants against the Attorney-General under Section 9 (a) of the Trading With the Enemy Act and if their claims are disallowed, they must resort to the form of action, authorized by the section, in the proper Federal Court (Cummings v. Deutsche Bank, *supra*, p. 122).

I specifically hold, however, that the funds or securities in the possession of the Chase National Bank are within the jurisdiction of this court and may be made

the subject of a provision in the decree settling the account, of a direction for repayment if a legal basis for such a direction be established. Under the provisions of Section 267 of the Surrogate's Court Act if "any person interested in an estate has received estate assets in excess of the amount determined on the settlement of the account to be lawfully due him the Surrogate shall have power to direct in the decree repayment by him of such excess to the representative of the estate or otherwise as justice may require * * *."

It should be noted that the Attorney-General in his brief specifically disclaims any attempt to question the jurisdiction of this court to fix the reasonable administration expenses allowable by the Surrogate. 782

The further contention of counsel for the executor that the decrees of this court of July 7th, 1921, and July 11th, 1922, are generally conclusive upon the Alien Property Custodian because of his participation in the accounting proceedings terminated by those decrees, is likewise overruled. They constitute a special bar upon any question which might have been raised as to items of the accounts but they do not constitute an estoppel and are not *res adjudicata* as against the present claim asserted by the Attorney-General that the release and relinquishment of the rights of the Government were procured by the fraud and misrepresentation of the claimants. 783

Submit order on notice accordingly.

784 **Affidavit of John S. Sorenson (Verified June 18, 1938).**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken, Plaintiffs, against 785 HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL-EINKAUFS-GESELLSCHAFT, m. b. H., Defendants.	Eq. No. 44-28.

State of New York,
County of Kings, ss:

John S. Sorenson, being duly sworn, deposes and says:

I am the surviving partner of the firm of Crossman & Sielcken, and reside at 757 Carroll Street, Brooklyn, New
786 York, and was one of the plaintiffs in the above entitled cause in my said representative capacity.

I make this affidavit in connection with the motion made by the attorney for the United States, for an order vacating the final decree entered in this cause on December 30, 1929.

I neither admit nor deny the statements contained in the moving affidavit, since I have been advised by my counsel, Edward Garfield, Esq., and Robert H. Wrubel, Esq., that I no longer have any pecuniary interest in the above entitled cause for the reasons hereinafter set forth.

When this suit was commenced, I, and the late Thorleif S. B. Nielsen, were advised by our then counsel and believed ourselves to be in law the only persons entitled to liquidate the assets of the firm of Crossman & Sielcken in liquidation, upon the ground that we were the surviving partners. It was for that reason that the above en-

titled proceeding was instituted by us in behalf of said partnership as such surviving partners. Long after the judgment was rendered in this cause, however, it was judicially determined in an action duly instituted in the Supreme Court of the State of New York, New York County, entitled, "The Chase National Bank of the City of New York, as Ancillary Executor of the Last Will and Testament of Thorleif S. B. Nielsen, deceased, Plaintiff, against John S. Sorenson, Irving Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, Clara Sielcken-Schwarz, George U. Kirkpatrick, James W. Smith, Terijohn Weitling, John F. Budelman, Maurice J. Elfenbein, and all other persons who have or who claim to have any interest whatever in the assets of Crossman & Sielcken, which persons, if any there be, and their names are unknown to plaintiff, Defendants," that the sole right to liquidate the assets and property of said partnership was vested in the Irving Trust Company, as Executor of the Last Will and Testament of Hermann Sielcken, deceased, and that no other person was lawfully entitled to be such liquidator. It was further determined in said action that neither said Nielsen nor myself was then, or at any other time since the dissolution of the firm of Crossman & Sielcken by the death of said Hermann Sielcken, on October 8, 1917, had been a liquidating partner thereof. The aforesaid determination was incorporated in a judgment entered in the aforesaid action in the office of the Clerk of the County of New York on November 11, 1933, a copy of which is annexed to the moving papers herein, marked Exhibit Z. It was further adjudged by the aforesaid judgment that the said Irving Trust Company as Executor of the Last Will and Testament of Hermann Sielcken, deceased, was entitled to the sole custody and possession of all the property and assets of every kind of said firm of Crossman & Sielcken in liquidation. I never retained any money or property in my individual capacity received by me in satisfaction of the final decree in this cause, and all money and property received by me and Thorleif S. B. Nielsen was received by us as surviving partners of

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790 *Affidavit of John S. Sorenson, Verified June 18, 1938*

the firm of Crossman & Sielcken, and all of the money or property held by me as surviving partner of said firm has been turned over by me to the Irving Trust Company as Executor of the Last Will and Testament of Hermann Sielcken.

In the aforesaid action in the Supreme Court of New York County, I claimed that under the partnership agreement I was entitled to 12 1/2% of such part of the recovery made under the decree of this cause as represented profits, but it was ordered and adjudged in the judgment
791 above referred to that on December 23, 1917, a final settlement had been made by virtue of which I had accepted a sum then paid me in full settlement of all of my claims to the assets of said firm of Crossman & Sielcken and the profits of said partnership, whether realized or to be realized in the future, and further, that said settlement was a full accord and satisfaction of my claim to share in the assets and profits of said firm, and that said settlement constituted a bar to any claim on my part to share in the recovery by said firm of Crossman & Sielcken for the cargoes seized by the British Naval authorities and under the compromise award granted by the Mixed Claims Commission referred to in the moving
792 papers herein.

By reason of the foregoing, I have no pecuniary interest in the above entitled cause.

I call the foregoing facts to the attention of this Court so that this Court may make such determination as it deems proper in the premises.

JOHN S. SORENSON.

Sworn to before me this
18th day of June, 1938.
Harold A. Binig,
Notary Public.
Kings County Clerk's No. 170.
Kings County Reg. No. 295.
Term expires March 30, 1940.

Order to Show Cause of Date June 4, 1938. 793

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs,
against
HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL-EINKAUFS-GESELLSCHAFT, m. b. H.,
Defendants.
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Equity No. 44-28.

Upon the affidavit of Vincent L. Banker, verified June 3, 1938, and upon the bill of complaint, the answers of the defendants filed herein in the Office of the Clerk of this Court, the final decree of December 30, 1929, and upon all the pleadings and proceedings heretofore had herein,

Let the Attorney-General of the United States, as successor to the Alien Property Custodian, show cause 795
before this Court at a stated term thereof for the hearing of motions, to be held in Room 506, the U. S. Court House, Foley Square, Borough of Manhattan, City and State of New York, on the 10th day of June, 1938, at 10:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an order should not be made and entered in the above entitled suit (1) vacating, setting aside, cancelling and annulling service on "The Chase National Bank of the City of New York, as Ancillary Administrator of the Estate of Thorleif S. B. Nielsen," of certain motion papers, dated May 18, 1938, served by Lamar Hardy, Esq., United States Attorney for the Southern District of New York, and seeking an order vacating the final decree entered in this suit on December 30, 1929; and (2) bringing into this pro-

796 *Order to Show Cause of Date June 4, 1938*

ceeding indispensable and necessary parties thereto and dismissing the proceeding sought to be instituted by said motion as against said "The Chase National Bank of the City of New York, as Ancillary Administrator of the Estate of Thorleif S. B. Nielsen," and for such other further and different relief as may be just and proper; and

Let service of this order to show cause with the affidavit hereto annexed on said United States Attorney on or before the 6th day of June, 1938, be deemed good and sufficient service; and

797 Let the time of "The Chase National Bank of the City of New York, as Ancillary Administrator of the Estate of Thorleif S. B. Nielsen," to file affidavits in answer to said motion papers dated May 18, 1938, be extended until ten (10) days after the final determination of this motion and the entry of an order thereon; and

Let the return day of said motion to vacate the decree of December 30, 1929, be extended until the first motion day following the expiration of said ten-day period after the final determination of this motion and the entry of an order thereon.

Dated, New York, June 4th, 1938.

798 ROBERT P. PATTERSON,
United States District Judge.

Affidavit of Vincent L. Banker, Verified June 3, 1938. 799

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs,
against
HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL-EINKAUFS-GESELLSCHAFT, m. b. H.,
Defendants.

Equity No. 44-28. 800

State of New York,
County of New York, ss:

Vincent L. Banker, being duly sworn, deposes and says:

I. I am a Vice President of The Chase National Bank of the City of New York and make this affidavit in support of an order to show cause:

(1) To vacate, set aside, cancel and annul service of motion papers on "The Chase National Bank of the City of New York, as Ancillary Administrator of the Estate of Thorleif S. B. Nielsen" (for brevity referred to hereinafter as "Chase Bank," such reference being intended to refer to said bank in its capacity as Ancillary Executor of the Estate of Thorleif S. B. Nielsen), said motion papers being dated May 18, 1938, and seeking "an order vacating the final decree entered in this cause on the 30th day of December, 1929, on the ground that said final decree is void because this Court was without jurisdiction to enter the same" upon the grounds (a) that Chase Bank was not a party to this suit, (b) has not been substituted as a party or in lieu of any party to this suit, (c) that Chase Bank never was appointed or acted as Ancillary Administrator of the Estate of Thorleif S. B. Nielsen; 801

802 *Affidavit of Vincent L. Banker, Verified June 3, 1938*

and (d) that Chase Bank, over three years prior to the service of these motion papers, was fully and finally discharged as Ancillary Executor of the Estate of Thorleif S. B. Nielsen; and

(2) To bring into this proceeding indispensable and necessary parties thereto hereinafter named and after such parties have been brought into this proceeding, to dismiss this proceeding against said The Chase National Bank of the City of New York, as Ancillary Administrator of the Estate of Thorleif S. B. Nielsen.

803 II. The facts and reasons in support of this motion and justifying the relief sought are as follows:

1. The decree of December 30, 1929, sought to be set aside in the above entitled suit was rendered in favor of "John S. Sorenson and Thorleff S. B. Nielsen, as surviving partners of the firm of Crossman & Sielcken." It was in this capacity as surviving partners of the partnership of Crossman & Sielcken that these parties appeared, and no other. They did not appear as individuals or seek any recovery as individuals. The recovery sought was a sum of money alleged to be due the partnership of Crossman & Sielcken. Neither The Chase National Bank of
804 the City of New York nor The Chase National Bank of the City of New York, as Ancillary Executor, etc., was a party to said action and at no time thereafter was the Chase Bank ever substituted for Thorleif S. B. Nielsen as a surviving partner of the firm of Crossman & Sielcken, or in any other capacity. The Chase Bank has been at all times and still is a stranger to the above entitled action.

2. On May 19, 1938, papers consisting of over 200 pages, including voluminous exhibits, and addressed to "The Chase National Bank of the City of New York, as Ancillary Administrator of the Estate of Thorleif S. B. Nielsen, 18 Pine Street, New York, N. Y.," and to "John S. Sorenson, Esq., 757 Carroll Street, Brooklyn, N. Y.," were served upon Chase Bank. Apparently, no service was made upon the defendants Frank White, as Treasurer

of the United States, or Zentral Einkaufsgesellschaft, m. b. H. (hereinafter sometimes referred to as Z. E. G.).

3. The only interest of the moving party appears to be derived through the allegation that the Attorney General of the United States is successor in interest to the Alien Property Custodian.

4. Thorleif S. B. Nielsen died on September 9, 1930, a resident of Bergen County, State of New Jersey. His will was duly admitted to probate in the Surrogate's Court of said county on October 2, 1930, and letters testamentary issued by that court to The Chase National Bank of the 806
City of New York. On April 3, 1935, said bank by a decree of said Surrogate's Court was fully discharged as such Executor. Because of the existence of certain assets of the estate within the State of New York, ancillary letters were issued out of the Surrogate's Court, County of New York, to Chase Bank on October 30, 1930. Thereafter Chase Bank served under said letters as Ancillary Executor within the State of New York until December 20, 1934, on which date a decree of the Surrogate's Court of New York County was duly made and entered (by Hon. James A. Delehanty, Surrogate), discharging the Chase Bank individually and as Ancillary Executor of the Last Will and Testament of Thorleif S. B. Nielsen and relieving 807
it of all further responsibilities thereunder and from any and all liability to any person interested therein. Said decree has not been vacated, set aside or modified, and is still in full force and effect.

5. Service of the motion papers herein has, therefore, been made upon Chase Bank over three years and five months after Chase Bank had been discharged as Ancillary Executor of the Nielsen Estate (referred to in the United States Attorney's motion papers as "Ancillary Administrator"), and at a time when it is not acting in such capacity. The Chase Bank was never appointed and never acted as Ancillary Administrator at any time but only as Ancillary Executor in New York and Executor in New Jersey.

808 *Affidavit of Vincent L. Banker, Verified June 3, 1938*

6. I am advised by counsel and believe that the moving affidavit and the exhibits thereto annexed in support of the motion of the United States Attorney, together with the complaint and answer of defendants, Sutherland, White and Z. E. G. show that

Prior to January 23, 1928, a suit was commenced by said Sorenson and said Nielsen "as surviving partners of the firm of Crossman & Sielcken" against the defendants named in the title to this suit, the solicitors for said plaintiffs being Earl V. Barnes and Brainard Avery of
809 the firm of Barnes, Avery & Whiting. On January 23, 1928, the Hon. Charles H. Tuttle, United States Attorney, appeared for defendants Sutherland and White and filed on behalf of such defendants a motion to dismiss and answer, the grounds of said motion to dismiss being (1) that it appeared affirmatively from the bill of complaint that no debt was owing to plaintiffs from any enemy whose property had been transferred or paid to the Alien Property Custodian and/or the Treasurer of the United States and was then held by said Alien Property Custodian and/or the said Treasurer; (2) that it appeared affirmatively that no debt was owing to plaintiffs from Z. E. G.; and (3) that the bill of complaint failed to state
810 facts sufficient to entitle plaintiffs to equitable relief under the provisions of the "Trading with the Enemy Act."

7. Paragraph Eleventh of the bill of complaint in this action alleged:

"ELEVENTH: On or about the 8th day of October, 1917, the said Hermann Sielcken died leaving the plaintiffs the only surviving partners of the said firm of Crossman & Sielcken and said partnership pursuant to Section 61 of the Partnership Law of the State of New York, thereafter continued for the purpose of winding up the affairs and this suit is brought pursuant to said purpose and to enforce the rights given said partnership under Section 9, subdivision (a) of the Trading with the Enemy Act, as amended."

Affidavit of Vincent L. Banker, Verified June 3, 1938 811

8. The answer of the defendants Sutherland and White to the said paragraph stated that they were without knowledge as to the averments of the said paragraph Eleventh and demanded strict proof thereof.

9. The answer of defendant Z. E. G. denied the allegation that the partnership of Crossman & Sielcken continued for the purpose of winding up its affairs and also the allegation that Sorenson and Nielsen were the surviving partners, and affirmatively alleged in paragraph 27 thereof

"that the said Hermann Sielcken owned all the assets 812
of Crossman & Sielcken; that the estate of Hermann Sielcken succeeded to all assets thereof and the plaintiffs are estopped from making the claim set forth herein."

10. The question of the right of Sorenson and Nielsen as surviving partners of Crossman & Sielcken to institute suit and recover thereon was thus squarely put in issue by all the defendants. No motion was made to reopen the decree at the term at which the case was tried or at any other time between 1929 and 1938 or until the present application. No appeal was ever taken from the decree and the time for appeal therefrom expired in 1930. Nor has any motion for a new trial ever been made nor any 813
bill of review ever been filed.

11. I am advised and believe that the claim of the United States upon this application is that said final decree was void because this court was without jurisdiction to enter the same and that the basis for alleged want of jurisdiction is the claim that Sorenson and Nielsen were not proper parties to prosecute the action.

12. In a brief presented to the Mixed Claims Commission by Brainard Avery, one of the attorneys for claimants, in connection with the claim of said plaintiffs against Germany and the firm of Theodor Wille, countersigned by Robert W. Bonynge, Agent of the United States, and H. H. Martin of counsel, being the same Robert W. Bonynge and H. H. Martin referred to in the

814 *Affidavit of Vincent L. Banker, Verified June 3, 1938*

moving papers herein, the argument was advanced that said Sorenson and Nielsen

"in their capacity as (a) liquidators and (b) as surviving partners of the firm of Crossman & Sielcken, are entitled to collect and receive all of the assets and credits of the said firm of Crossman & Sielcken and to procure and recover upon any and all causes of action in favor of said firm at the time of its dissolution."

13. I am advised and believe that the above entitled suit was brought in good faith in the belief that the
815 right of action to recover any sums due the firm of Crossman & Sielcken rested in said plaintiffs as surviving partners of said firm and that this question was duly litigated in this suit.

14. I am advised and believe that the motion papers herein from pages 14 to 22 thereof, inclusive, show that the payment of the sum awarded under the decree herein sought to be reopened and set aside was, with the consent, acquiescence and approval of the American Agent and Department of Justice, made the part of a general settlement of certain other claims that might have been advanced in Germany against the German
816 executors and the ample German estate of Hermann Sielcken, deceased, and not against the firm of Crossman & Sielcken or the American estate of Hermann Sielcken, and that as a result and a part of said general settlement the judgment was satisfied. The moving papers themselves show that the Attorney-General, the very officer who brings this proceeding as alleged successor to the Alien Property Custodian, had notice over eight years before the commencement of this proceeding that Z. E. G. would not appeal (Exhibit V attached to the motion papers).

15. Subsequent to the payment of said judgment, together with certain other sums paid under the terms of the general settlement referred to in the moving papers, a dispute arose between said Sorenson and Nielsen on

the one part and Irving Trust Company, as Executor of the Estate of. Hermann Sielcken, on the other, as to their respective rights, if any, to the sums so recovered. Before that dispute reached the stage of litigation, the said Nielsen died and The Chase National Bank of the City of New York qualified as Executor under his will in the State of New Jersey. Shortly thereafter, the said Bank, having been appointed Ancillary Executor in the County of New York, as aforesaid, instituted an action in the Supreme Court, County of New York, against said Sorenson, the Irving Trust Company, as 818
Executor of the Sielcken Estate, and Clara Sielcken-Schwarz (Sielcken's widow), claiming that said Nielsen had been personally entitled to a twelve and a half per cent partnership interest in said sums. Said Sorenson, who was a defendant in that action, answered therein, making the counterclaim that he also was entitled to a share and asserted that he alone, since the death of said Nielsen, was entitled to liquidate the assets of the firm of Crossman & Sielcken, as sole surviving and liquidating partner of that firm. While this matter was in dispute all moneys received from said settlement, including moneys received under the judgment of December 30, 1929, were held in a special account in the name 819
of Crossman & Sielcken in liquidation and John S. Sorenson and Thorleif S. B. Nielsen, Liquidators, from which no disbursements could be made, except with the countersignature of the Irving Trust Company, as Executor of the Sielcken Estate, said estate asserting that it was entitled to all the assets of the firm of Crossman & Sielcken and had the right to liquidate said assets as the sole liquidator.

16. After an extensive trial of that case, a judgment was entered on November 11, 1933, in the Supreme Court for the County of New York, that neither said Sorenson nor said Nielsen was, under the articles of partnership of Crossman & Sielcken, entitled to the position of a liquidating partner and that they should turn over to said Irving Trust Company, as Executor

of the Sielcken Estate, all funds resulting from said judgment and/or settlement. Upon information and belief, said funds (less such sums as were paid therefrom to Z. E. G., the attorney for Z. E. G., Barnes, Avery & Whiting and others) were turned over as decreed and the Chase Bank never received or retained for or on behalf of the Nielsen Estate any part of such recovery, the entire sum (less such sums paid therefrom as heretofore mentioned) having been turned over to Irving Trust Company, as Executor of the Sielcken Estate. I am informed and verily believe that Niel-
821 sen never received any portion of the funds recovered under said judgment and/or settlement, and Chase Bank has received none.

17. The Attorney-General of the United States in his moving papers presents no excuse for failure to make his motion at the term at which this suit was tried, as required by law. No fraud or concealment in procuring the decree is charged or proved. The sole ground upon which this motion is made is alleged lack of jurisdiction without any definite specification as to wherein there was lack of jurisdiction. A summary contained in pages 33 to 36, inclusive, of the moving
822 affidavit of Frank C. Sterck, verified May 18, 1938, bases this motion to vacate and set aside the decree of December 30, 1929, upon the alleged grounds

(1) That neither Sorenson nor Nielsen was lawfully entitled to act as liquidator or as liquidating partner of the firm of Crossman & Sielcken and that neither Sorenson nor Nielsen had any interest in the assets or profits of the firm;

(Obviously, this was not known or believed by any of the counsel then in this suit to be true on or before December 30, 1929. The judgment of the Supreme Court, New York County, declaring that Sorenson and Nielsen were not liquidating partners was not entered until November 11, 1933, after protracted litigation over the question as to whether or not Sorenson was entitled-

to be the sole liquidating partner, or whether the Irving Trust Company, as Executor of the Sielcken Estate, held that exclusive right. The question of the right of liquidation of the partnership assets was highly controversial and involved many disputed questions of law and fact, and the question was resolved in favor of the Irving Trust Company, as Executor of the Sielcken Estate, only after the period for an appeal from the Judgment of November 11, 1933, deciding this question in favor of said Irving Trust Company, had expired.)

824

(2) That the Alien Property Custodian immediately after October 6, 1917, seized all the assets of Crossman & Sielcken and title became vested in the United States, thereby divesting said Sorenson and Nielsen of any interest therein;

(There is no evidence in the moving papers in support of this statement either in law or fact, and such was not the fact. On the contrary, the only semblance of claim that the Alien Property Custodian had ever made to the property of Crossman & Sielcken was, on information and belief, as follows:

In or about September, 1917, Sorenson and Nielsen were having great difficulty in obtaining from the War Trade Board permits for the export of goods, the firm of Crossman & Sielcken having been engaged in an exporting and importing business. 825

Hermann Sielcken died on October 8, 1917, although that fact did not become known in this country until on or about December 17, 1917.

On November 16, 1917, the War Trade Board [and not the Alien Property Custodian] gave to Sorenson and Nielsen a permit for making exports, a copy of which is hereto annexed and marked Exhibit A. Under the power of supervision reserved by said War Trade Board, said Board appointed the Alien Property Custodian to supervise with power of substitution. Acting thereunder, the Alien Property Custodian appointed

826 *Affidavit of Vincent L. Banker, Verified June 3, 1938*

the Columbia Trust Company on November 30, 1917, to exercise such supervision as his agent, a copy of said letter of appointment being annexed hereto and marked Exhibit B. In the exercise of such supervision, the Columbia Trust Company took into its possession stocks and bonds held by the firm of Crossman & Sielcken and made no attempt to seize its other assets.

Upon learning of said Sielcken's death, application was made to the Surrogate's Court of New York County for the probate of his will and the issue of letters
827 to said Columbia Trust Company [now Irving Trust Company]. Thereafter the Columbia Trust Company advised the Alien Property Custodian that in its opinion the Alien Property Custodian had no interest in the property of the firm of Crossman & Sielcken, that Sielcken's interest therein vested in the American executor, namely, the Columbia Trust Company, and requested that the Alien Property Custodian abandon the supervision of the liquidation before the War Trade Board and that he turn over the entire matter of liquidation to the executor. This was arranged early in January, 1918, and on January 14, 1918, the Alien Property Custodian sent a letter to the Columbia Trust
828 Company, of which a copy is hereto annexed and marked Exhibit C. Pursuant to that letter, the Columbia Trust Company applied to the War Trade Board for a permit and on January 21, 1918, the War Trade Board issued two permits, one to Sorenson and Nielsen and one to the Columbia Trust Company, copies of which are annexed hereto and marked Exhibits D and E, these permits superseding the prior permit of November 16, 1917, and the instructions therein contained.

In October, 1917, Sorenson and Nielsen, on behalf of the firm, had subscribed for $100,000 of Liberty Bonds and sent a check to Washington to pay for the same. In some way and by some unknown method, this check or the bonds were handed over to the Alien Property Custodian, who retained it, and the only application made by the Columbia Trust Company, or its successor, the

Irving Trust Company, for release of any property of Sielcken or of Crossman & Sielcken was for the return of that $100,000, which had never been seized by the Alien Property Custodian under the provisions of the Trading with the Enemy Act; and that $100,000, less some expenses which the Alien Property Custodian claimed to have incurred in connection therewith, was subsequently returned to the Columbia Trust Company, as Executor, which immediately turned the amount over to the residuary legatee, photostatic copies of the statement of the property taken and the receipt given upon the return thereof being annexed hereto and marked Exhibits F and G. 830

There was no other attempt at seizure by the Alien Property Custodian of the assets of Crossman & Sielcken, nor was there any attempt to seize the property of Hermann Sielcken as that of an enemy, nor could there have been because he died before any Alien Property Custodian was appointed. Nor was any demand made by the Alien Property Custodian either of Sorenson or of Nielsen or of the Columbia Trust Company that they turn over to him any interests of Herman Sielcken in the firm property for the interest of Clara Sielcken [now Clara Sielcken-Schwarz] in the estate of Hermann Sielcken. 831

In point of fact, however, in October, 1918, the Alien Property Custodian did serve a demand on the Columbia Trust Company for the interest of Clara Sielcken, the widow of said Hermann Sielcken, deceased [now Clara Sielcken-Schwarz] in the estate of Hermann Sielcken. That demand he withdrew in 1921, acting under instructions of the Attorney-General, so that the intimation that the Alien Property Custodian immediately after October 6, 1917, seized all the assets of Crossman & Sielcken and title thereto became vested in the United States, and Sorenson and Nielsen thereby divested of any interest therein, is entirely contrary to the facts.

(3). That Sorenson and Nielsen, when they instituted suit, had full knowledge that the Irving Trust Company was the sole owner of the partnership claim but was

832 *Affidavit of Vincent L. Banker, Verified June 3, 1938*

precluded from filing same because the said Sielcken was an enemy;

(There is no evidence in the moving papers of such knowledge on the part of either Sorenson or Nielsen; to the contrary, it appears that that issue was raised in the suit and determined adversely to the United States. As between Sorenson, Nielsen and the Irving Trust Company, as Executor, etc., the question of who was entitled to the assets of the partnership and to act as liquidator was not determined until November 11, 1933).

833 (4) That said Sorenson and Nielsen had knowledge at the time of the claim that Theodor Wille of Hamburg, Germany, had an interest in said claim;

(The fact is that such claim, as Wille later asserted, came up in connection with the settlement of the Mixed Claims Commission proceeding against Wille, and, as this deponent is informed and believes, was not a claim against the firm of Crossman & Sielcken, and the moving papers show that the Department of Justice and the Attorney-General had full knowledge thereof in 1930.)

834 (5) That there was an indemnity agreement between Z. E. G. and the German executors of Sielcken, who had nothing to do with the partnership assets of Crossman & Sielcken, but who had made an agreement in Germany whereby they had promised to save Z. E. G. harmless against any claim by Crossman & Sielcken on account of the shipments, seizure of which resulted in the damages awarded in the judgment of December 30, 1929.

(Again, the moving papers themselves show full knowledge in 1930 of such alleged indemnity agreement on the part of the United States and settlement of the claims in payment of the judgment of December 30, 1929, on the basis of such knowledge.)

18. The present position of the Chase Bank is as follows:

It has fully accounted as Ancillary Executor of the Nielsen Estate and, in accordance with the decree of

December 20, 1934, turned over, long prior to the service of the motion papers herein, all the assets of that estate remaining in its hands to the legatees of Thorleif S. B. Nielsen, in pursuance of the decree upon such accounting and has been fully discharged. Said bank is no longer acting in the capacity of Ancillary Executor or Ancillary Administrator of said Estate and was not so acting at the time of service of the motion papers herein.

19. I am informed and verily believe that such moneys as were paid under the decree of December 30, 1929, were 836 ultimately received years ago either by the Irving Trust Company, as Excutor of the Estate of Hermann Sielcken, deceased (or the predecessor company to said Irving Trust Company), Zentral Einkaufsgesellschaft (or its alleged successor, the German Reich) or its attorney, Arthur Garfield Hays, Esq., of New York City, or Theodor Wille, Santos, Brazil, or the firm of Barnes, Avery & Whiting, Avery & Whiting, Clara Sielcken-Schwarz, and Alexander W. Sielcken. I am informed that none of said moneys were paid to Thorleif S. B. Nielsen during his lifetime and I aver that none of said moneys were paid to the Chase Bank.

837

20. The Chase Bank is advised by counsel, and verily believes, that upon any application to vacate a decree of this court made many years after its entry upon the grounds set forth in the moving papers, it is the law that notice of such motion must be given to all parties who have meantime acquired any interest under such decree so that they may have an opportunity to be heard on any such application.

21. In addition to the lack of notice to the Treasurer of the United States or Zentral Einkaufsgesellschaft, parties to this suit as aforesaid, no notice has been given to

(1) Irving Trust Company, as Executor of the Estate of Hermann Sielcken, deceased;

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(2) Clara Sielcken-Schwarz, residuary legatee of the Estate of Hermann Sielcken;

(3) Arthur Garfield Hays, Attorney for Z. E. G.;

(4) Theodor Wille;

(5) Barnes, Avery & Whiting, or Avery & Whiting;

(6) Alexander W. Sielcken.

22. The Chase Bank, as Ancillary Executor, or as Executor of the Estate of Thorleif S. B. Nielsen, has no
839 funds of said estate whatsoever, and respectfully submits that it is not a necessary or proper party to this proceeding and that it is without interest therein.

23. I am informed that the Attorney-General of the United States has appeared in an accounting proceeding by the said Irving Trust Company, as Executor of the Estate of Hermann Sielcken, deceased, now pending in the Surrogates' Court for the County of New York, and has there served and filed what he terms an objection to the account, a copy of which is annexed hereto and marked Exhibit H. That document discloses that the purpose of the application to vacate the said decree of
840 this court dated December 30, 1929, is made to reach sums paid over to the Irving Trust Company, as Executor of the Sielcken Estate, and accounted for by it in its account in that proceeding.

24. The Chase Bank, therefore, represents to this court that all the persons disclosed in the moving papers on the application herein to vacate the judgment as having received funds out of the proceeds of that judgment should be cited to present their rights and to have an opportunity of opposing the vacation of such judgment, and that upon such citation as may be ordered by this court, the Chase Bank be relieved of any further burden in this matter, and that this proceeding be dismissed as against it.

25. The names of the persons disclosed by the moving papers as having an interest in said decree of Decem-

ber 30, 1929, are as follows, upon information and belief:

(1) Irving Trust Company, as Executor of the Estate of Hermann Sielcken, deceased, 1 Wall Street, New York City;

(2) Arthur Garfield Hays, Esq., 120 Broadway, New York City;

(3) Treasurer of the United States, Washington, D. C.;

842

(4) Zentral Einkaufsgesellschaft, Berlin, Germany (appeared in this suit by Arthur Garfield Hays, Esq.);

(5) Theodor Wille, Santos, Brazil;

(6) Clara Sielcken-Schwarz, Klopstockstrasse 3, Sontenay, Hamburg, Germany;

(7) Alexander Wendroth Sielcken, c/o The Chase National Bank, 11 West 42nd Street, New York City;

(8) Marie F. Barnes, as Executrix of the Estate of Earl V. Barnes, 145 Beaumont Street, Brooklyn, N. Y.;

(9) Brainard Avery, Esq., 55 Liberty Street, New York City

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Jay E. Whiting, Esq., 55 Liberty Street, New York City

George O. Castell, 55 Liberty Street, New York City.

26. No previous application for the relief herein sought has been made to any other court or judge.

WHEREFORE, Chase Bank prays that service of the motion papers to vacate the said decree of December 30, 1929, in this suit upon said The Chase National Bank of the City of New York, as Ancillary Administrator of the Estate of Thorleif S. B. Nielsen, deceased, be vacated, set aside, cancelled and annulled or, in the alternative, that the Attorney General of the United States be directed to give notice of said motion to vacate the decree of December 30, 1929, to the above named per-

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sons and parties, and upon such notice being given to said parties and persons as the court may direct that this proceeding be dismissed as against said Chase Bank, and that the time of said Chase Bank to file affidavits in answer to the moving papers herein be extended until ten (10) days after the decision upon this motion to vacate or bring in additional parties.

VINCENT L. BANKER.

Sworn to before me this
3rd day of June, 1938.
845 SHERMAN L. ANDERSON,
Sherman L. Anderson,
Notary Public,
Westchester County.
Certificate Filed in New York County
No. 217, Register No. 9-A-156.
Certificate filed in Kings County
No. 24, Register No. 9131.
Commission Expires March 30, 1939.
(Seal)

846

Exhibit A.

Exhibit A of Affidavit of Vincent L. Banker.

This is a duplicate of Exhibit F of the Affidavit of Frank C. Sterck of May 18, 1938, which exhibit is printed above on pages 85 to 86.

Exhibit B.

Exhibit B of Affidavit of Vincent L. Banker.

This is a duplicate of Exhibit G of the Affidavit of Frank C. Sterck of May 18, 1938, which exhibit is printed above on pages 87 to 88.

Exhibit C of Affidavit of Vincent L. Banker. 847

Exhibit C.

ALIEN PROPERTY CUSTODIAN

Sixteenth and P Streets, N. W.

Washington, D. C.

New York, January 14, 1918.

Crossman & Sielcken.

Mr. G. E. Warren, V. P., 848
Columbia Trust Co.,
60 Broadway, N. Y. C.

Dear Sirs:

I acknowledge receipt of a certificate evidencing your appointment as temporary administrator of the Estate of Hermann Sielcken.

Under date of November 31, 1917, you were appointed my Agent for the purpose of supervising the liquidation of the interest of Hermann Sielcken in the firm of Crossman & Sielcken under license ET-344, issued by the War Trade Board.

In view of the death of Mr. Sielcken, and your appointment as temporary administrator and nomination 849
as executor of his will, you are hereby authorized as such temporary administrator, and executor when letters are issued to you, to take possession of all the assets of the late Hermann Sielcken as of October 8, 1917, the date of his death, and to account for them thereafter in due course of administration. In liquidating the interest of the late Hermann Sielcken in the firm of Crossman & Sielcken you will, of course, pay the necessary expenses incident thereto and the debts owing by the firm, the estate being the sole owner thereof.

It will, however, be necessary for you to obtain a license from the War Trade Board authorizing you to take over and manage the estate of said Sielcken as such administrator and executor.

850 *Exhibit C of Affidavit of Vincent L. Banker*

A statement of the assets and liabilities of the firm of Crossman & Sielcken as of September 30, 1917, was prepared by Arthur Young & Co. under the direction of this Department which statement, for the purposes of liquidation, is satisfactory to this Department. This statement is to be continued down to October 8, 1917, the date of Mr. Sielcken's death, for the purpose of establishing the value of the estate taken over by you.

The settlement made with the surviving partners, whose interest terminated upon the dissolution of the
851 firm, is approved.

Yours very truly,

(Signed) J. A. BOWER, Mgr.
Genl. Business Dept.

852

Exhibit D of Affidavit of Vincent L. Banker. 853

Exhibit D.

WAR TRADE BOARD
Washington, D. C.

License No. ET-7454
Date Jan. 21, 1918
Expires .....
Applicant's No. .....

UNITED STATES
OF
AMERICA 854

License issued under Section 5 (a) of the Trading with the Enemy Act.

License is hereby granted to JOHN S. SORENSON and THORLEIF S. B. NEILSEN, of 90 Wall Street, New York, N. Y., to continue the business of the co-partnership of Crossman & Sielcken, of which Herman Sielcken, deceased, was a member, for the purpose of liquidating and disposing of the interest of the estate of said Herman Sielcken, deceased, in the business, assets and property of the said firm of Crossman & Sielcken, and in the course 855 of same to trade with any person, firm or corporation, excepting an "enemy" or "ally of enemy" not holding a license under this act, or a person acting on behalf of or for the benefit of such "enemy" or "ally of enemy."

The licensees may, however, collect any sums due from the "enemies" or "allies of enemies" and persons acting on behalf of or for the benefit of such "enemies" or "allies of enemies," a list of whom has been forwarded to the War Trade Board and the Alien Property Custodian.

It is a term and condition of this license that

(1) Said liquidation shall be carried out under the supervision of Arthur Young & Co., of New York, as Certified Public Accountants, and under such additional

856 *Exhibit D of Affidavit of Vincent L. Banker*

supervision and in accordance with such plan and method as may be desired by the Alien Property Custodian, and all expenses of such supervision shall be paid as part of the expenses incidental to said liquidation;

(2) The licensees shall transfer to the Alien Property Custodian, whenever he shall so require, the whole or any part of the share of the said estate of Herman Sielcken, deceased, in the proceeds of the aforesaid liquidation;

857 (3) A report of the progress of said liquidation shall be made to the Alien Property Custodian and the War Trade Board at the end of each calendar month, or oftener if required; and

(4) This license is revocable and subject to amendment in the discretion of the War Trade Board.

JLS

This license is issued on the basis of the statements made in your application, and is subject to the rules and regulations which have been, or which may be hereafter,
858 issued by the War Trade Board, and to any special conditions that may be set out herein.

WAR TRADE BOARD,
Vance C. McCormick, Chairman,

BUREAU OF ENEMY TRADE,
By John Henry Hammond (Signed)
per J. L. S.

(Seal)

This license is not valid
unless signed and impressed
with the seal of the War Trade
Board.

THIS LICENSE IS REVOCABLE.

Exhibit E of Affidavit of Vincent L. Banker. 859

Exhibit E.

WAR TRADE BOARD
WASHINGTON, D. C.

License No. ET-7453
Date January 21, 1918
Expires 191
Applicant's No.

UNITED STATES
OF
AMERICA 860

License issued under Section 5(a) of the Trading with the Enemy Act.

License Is Hereby Granted To Columbia Trust Company, of 60 Broadway, New York, N. Y., to engage in trade on behalf of the devisees and legatees under the will of Hermann Sielcken, deceased, by acting as temporary administrator and executor under said will.

This license is granted upon the following terms and conditions: 861

1. That any money or property now or hereafter held by said licensee, which any "enemy" or "ally of enemy" would at any time or times be entitled to receive if he were not an "enemy" or "ally of enemy" shall, at such time or times, either upon or without demand therefor, be conveyed, transferred, assigned, delivered, and paid over to the Alien Property Custodian, whether or not so required by the President or by the Alien Property Custodian, notwithstanding any act of an "enemy" or "ally of enemy," or of another, including the licensee herein, done or attempted since the "enemy" or "ally of enemy" became such, or in contemplation of his becoming such.

2. That no payment of any money or other property shall be made to, for, on account of, or for the benefit of

862 *Exhibit E of Affidavit of Vincent L. Banker*

any person who is an "enemy" or "ally of enemy," nor shall any form of business, commercial or other communication, or intercourse, be had with any "enemy" or "ally of enemy," whether said "enemy" or "ally of enemy" is a party in interest in said estate or otherwise.

3. That the words "enemy" and "ally of enemy" are used in this license with the meaning defined by the "Trading with the Enemy Act."

863 JLS.

This license is issued on the basis of the statements made in your application, and is subject to the rules and regulations which have been, or which may be hereafter, issued by the War Trade Board, and to any special conditions that may be set out herein.

WAR TRADE BOARD,
VANCE C. McCORMICK, Chairman

Bureau of Enemy Trade,

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By John Henry Hammond
per J. L. S.

(Seal)

This License is not valid unless signed and impressed with the seal of the War Trade Board.
Form WTB 104

THIS LICENSE IS REVOCABLE

-323-778.

Claim.....2944.....

3/31/22

ALIEN PROPERTY CUSTODIAN

Statement of Property taken over under Trust.....A.....

in the name of.....Herman Sielcken.....

except payments received by depositary since last report.

Report	Received from	Property Received	Income	Property Except Cash to be returned	Cash to be returned
1/922	Columbia Trust Co., as executor of Est. of Herman Sielcken, and Kressman & Sielcken, N.Y.C.	All right, title and interest of Herman Sielcken, now deceased in the copartnership of Cressman & Sielcken.			
		Received on account of the liquidation of Cressman & Sielcken.....			[illegible]
		Paid expenses from this trust:			
		To Jos. K. Hutchinson.....		$ [illegible]	
		To Knight, Boland, Hutchinson & Christian.....		[illegible]	
				Balance to return.....	$ [illegible]

ALIEN PROPERTY CUSTODIAN

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EXHIBIT G of AFFIDAVIT of VINCENT L. BAKER.

Receipt of a Corporation Claiming any Interest, Right or Title in or to Money or Property on Claim Filed under Section 9 of the Trading with the Enemy Act.

Trust No. 2 Claim No. 8014

WHEREAS, pursuant to the provisions of Section 9 of the Act of Congress known as the "Trading with the Enemy Act", and the regulations of the Alien Property Custodian in relation thereto, the undersigned has heretofore filed with the Alien Property Custodian notice of claim against the money and property in the hands of said Custodian or the Treasurer of the United States taken as the property of HERMAN SIELCKEN and/or ESTATE OF HERMAN SIELCKEN, determined by said Custodian to be an enemy, and has also made application to the Attorney General of the United States for the allowance of said claim under the authority conferred on said Attorney General, by Article XXXII of the Executive Order of October 12, 1917; and

WHEREAS, the Attorney General, exercising the authority so conferred, has ordered the payment of the money or delivery of the property hereinafter described to this applicant;

NOW, THEREFORE, in consideration of the premises, Columbia Trust Company, as Executor of the Will of Herman Sielcken, deceased, a corporation in the State of New York, the undersigned, does hereby acknowledge payment of the money or delivery of the property to it by the Alien Property Custodian and the Treasurer of the United States as follows, to-wit:

Check of the Treasurer of the United States, No. on Special Account No. 8 to the order of Columbia Trust Company as Executor of the Will of Herman Sielcken, deceased, Trust #1, for the sum of Ninety-four Thousand, Three Hundred Fifty-one Dollars and Thirty Cents ($94,351.30); also All right, title and interest of Herman Sielcken, now deceased, in the copartnership of Grossman & Sielcken.

And does hereby further acknowledge and accept such money or other property as a full compliance with said order; reserving, however, to the Executor the right to claim and receive interest if and when provision may be made by legislation to that end.

In consideration of the premises, Columbia Trust Company, as Executor of the Will of Herman Sielcken, deceased, the undersigned, as aforesaid, does hereby release and forever discharge the President of the United States, the Treasurer of the United States, A. Mitchell Palmer, individually and as Alien Property Custodian, Francis P. Garvan, individually and as Alien Property Custodian, and all other persons exercising the authority of them or of Thomas W. Miller, individually and as Alien Property Custodian, all other persons exercising the authority of them, or of

any of them, from any and all right, claims and demands of every kind, character and description, whether joint or several, which it may have, based upon or arising out of any and all money or other property paid to or received by the Alien Property Custodian, or by the Treasurer of the United States as the money or other property owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of

HERMAN SIELCKEN and/or ESTATE OF HERMAN SIELCKEN

and does further release and forever discharge them in respect to anything done or omitted in pursuance of any order, rule or regulation made by the President under the authority of this Act. to the extent of the property above described.

IN WITNESS WHEREOF, Columbia Trust Company, as Executor of the Will of Herman Sielcken, deceased, the corporation as aforesaid, has caused these presents to be executed by Edward E. Warren, 1st Vice President, and its corporate seal to be hereunto affixed and attested by Lazarus McMahon, 1st Asst Secretary, this 5 day of April A.D. 1921.

Signed and Sealed
in the Presence of:

F. M. Morgan

W. F. Walkers

Columbia Trust Co
as Executor of the Will of Herman Sielcken
deceased

By E. E. Warren
1st Vice President

ATTEST:

L. McMahon
Secretary

STATE OF New York }
COUNTY OF New York } SS.

On the 5th day of April in the year 1921, before me personally came E. E. Warren to me known, who, being by me duly sworn, did depose and say that he resides in New York City that he is the Vice-President of The Columbia Trust Co. the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that he signed his name thereto by like order.

M. B. Lafougeray

[illegible]

[illegible] March 30th, 1922.

874 *Exhibit H of Affidavit of Vincent L. Banker.*

Exhibit H.

SURROGATE'S COURT,

NEW YORK COUNTY.

IN THE MATTER

of

875 The judicial settlement of the account of Proceedings of Irving Trust Company as Executor of Herman Sielcken, deceased.

Homer S. Cummings, as Attorney General of the United States, and as successor of the Alien Property Custodian, in behalf of the United States of America, as intervener, for his answer and objections to the account herein, by his attorney, Lamar Hardy, United States Attorney for the Southern District of New York, upon information and belief alleges:

876 1. That John S. Sorenson and Thorleif S. B. Nielsen, as the surviving partners of the firm of Crossman & Sielcken, instituted an action in the United States District Court for the Southern District of New York in purported compliance with the provisions of the Trading with the Enemy Act, as amended (40 Stat. 411) against Howard Sutherland, as Alien Property Custodian, Frank White, as Treasurer of the United States, and Zentral Einkauf Gesellschaft m.b.h., defendants, equity number 44-28, Southern District of New York, and by final decree dated December 30, 1929, recovered $716,160.37, and said final decree was satisfied in full in the sum of $726,681.40, out of moneys held by the Alien Property Custodian and the Treasurer of the United States under the provisions of the Trading with the Enemy Act, as amended.

Exhibit H of Affidavit of Vincent L. Banker 877

2. The executor accounts for the proceeds of said recovery on page 53 et seq., Schedule I, page 2, of the instant account of proceedings of the executor.

3. A Notice of Motion to Vacate the aforesaid Final Decree upon the affidavit of Frank C. Sterck, attorney, Department of Justice, and exhibits annexed thereto, verified the 18th day of May, 1938, was served upon said John S. Sorenson and upon the Chase National Bank of the City of New York, as ancillary executor of said Thorleif S. B. Nielsen, on the 19th day of May, 1938, and said motion is returnable at the term of the United 878
States District Court for the Southern District of New York, for motions, to be held on the 3rd day of June, 1938, on the ground that said final decree is void because that Court was without jurisdiction to enter the same.

4. This objectant objects to the account of the executor, without making specific objections thereto, but reserving the right to file specific objections thereto upon order of this Court and upon the determination of the said Motion to Vacate the Final Decree in said action in equity number 44-28, United States District Court for the Southern District of New York, on the ground that 879
until said determination of said motion, the executor may not secure a judicial settlement of the account of moneys and property, the title to which is now being questioned by said Motion to vacate said Final Decree as being the moneys and property of the United States of America.

Dated, New York, N. Y., May 19, 1938.

LAMAR HARDY,
United States Attorney for the Southern
District of New York,
Attorney for Objectant,
Office and P. O. Address,
United States Court House,
Foley Square,
Borough of Manhattan,
City of New York.

880 *Exhibit H of Affidavit of Vincent L. Banker*

State of New York,
County of New York, ss:

David W. Wainhouse, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Southern District of New York; that he has read the foregoing Objections and knows the contents thereof, and that the same is true to the knowledge of deponent, except as to matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

881

DAVID W. WAINHOUSE

Sworn to before me this
19th day of May, 1938.
Armand Chankalian,
Notary Public,
New York Co.
Clerk's No. 301, Reg. No. 9C392.
Commission expires March 30, 1939.

882

Order of June 15, 1938, Vacating Service of Notice, etc., on Chase National Bank. 883

At a Stated Term of the United States District Court held in and for the Southern District of New York, at the United States Court House, Foley Square, Borough of Manhattan, City of New York, on the 15th day of June, 1938.

Present: Honorable John W. Clancy,
United States District Judge.

884

JOHN S. SORENSON and THORLIEF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs,

against

HOWARD SUTHERLAND, as Alien Property Custodian, FRANK WHITE, as Treasurer of the United States and ZENTRALEINKAUFS-GESELLSCHAFT, M. B. H.,
Defendants.

Order E44-28

885

A motion having been duly made by the Attorney-General of the United States as successor to the Alien Property Custodian for an order vacating the final decree entered in this cause on the 30th day of December, 1929.

Now, after reading and filing notice of motion to vacate final decree, the affidavit of Frank C. Sterck, and exhibits attached thereto, duly verified the 18th day of May, 1938, all in support of said motion, the order to show cause of the Chase National Bank of the City of New York, as ancillary executor of the estate of Thorlief S. B. Nielsen, appearing specially, and after hearing Chadbourne, Wallace, Parke & Whiteside, Esqs. (Leonard P. Moore, Esq., of counsel), attorneys for the Chase National Bank of the City of New York, as ancil-

886 *Order of June 15, 1938, Vacating Service of Notice, etc., on Chase National Bank*

lary executor of the estate of Thorlief S. B. Nielsen, declare that the Chase National Bank of the City of New York has been discharged as ancillary executor of the estate of Thorlief S. B. Nielsen and that it has no further interest of any kind in said estate, and Lamar Hardy, United States Attorney for the Southern District of New York, attorney for the Attorney-General of the United States, as successor to the Alien Property Custodian (Francis J. McNamara, Esq., of counsel) and due
887 deliberation having been had thereon,

Now, on motion of Lamar Hardy, United States Attorney for the Southern District of New York, attorney for the Attorney-General of the United States, as successor to the Alien Property Custodian, it is

Ordered that the service of the notice of motion, affidavit of Frank C. Sterck with exhibits attached thereto, to vacate the final decree entered in this cause on the 30th day of December, 1929, served upon the Chase National Bank of the City of New York, as ancillary executor of the estate of Thorlief S. B. Nielsen, be and the same is hereby vacated, annulled and declared to be of no effect.

888

JOHN W. CLANCY,
United States District Judge.

Order to Show Cause of June 16, 1938. 889

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,

Plaintiffs,

against

HOWARD SUTHERLAND, as Alien Property Custodian, FRANK WHITE, as Treasurer of the United States and ZENTRAL EINKAUFS-GESELLSCHAT, m. b. H., 890

Defendants.

Equity No. 44-28

In proceedings to vacate final decree of December 30, 1929.

Upon the annexed petition of the Irving Trust Company as Executor of Hermann Sielcken, deceased, and 891 the exhibits thereto annexed, and the annexed affidavit of Selden Bacon, and the notice of motion by the Attorney-General of the United States dated the 18th day of May, 1938, to vacate the final decree of this Court of December 30th, 1929, entered in the suit brought in this Court by John S. Sorenson and Thorleif S. B. Nielsen as surviving liquidating partners of the firm of Crossman & Sielcken, Plaintiffs, against Howard Sutherland as Alien Property Custodian and others, Defendants, and the affidavit and exhibits annexed to said notice of motion,

Let the Attorney-General of the United States show cause, if any there be, before this Court at a term thereof for the hearing of motions to be held on the 24th day of June, 1938, at the Federal Court House in the Borough of Manhattan and Southern District of New York, at the

892 *Order to Show Cause of June 16, 1938.*

opening of Court on said day or as soon thereafter as counsel can be heard, why the said Irving Trust Company as such executor of Hermann Sielcken, deceased, should not be permitted to intervene in this proceeding to vacate said decree as prayed in its said annexed petition and oppose and answer such proceeding to vacate said decree of December 30th, 1929; and why the Attorney-General of the United States should not be required to serve a copy of his notice of such motion to vacate said decree and the papers thereto annexed on the solicitors appear-
893 ing for said Irving Trust Company as such executor of Hermann Sielcken, deceased, within a time to be fixed by this Court; and why the said Irving Trust Company as such executor should not have twenty days in which to answer such motion papers; and why the hearing of such motion to vacate said decree and any action upon such motion should not be stayed until the said Irving Trust Company shall have had such opportunity to serve its answerng papers upon the said motion and then be brought on for hearing on not less than two days' notice of the time and place of such hearing.

Meantime, and until the disposition of this application to intervene all proceedings on said motion to vacate
894 said decree of December 30th, 1929, are hereby stayed.

Let service of this order and annexed petition and affidavit on the attorney for the Attorney-General on or before June 17th, 1938, be sufficient.

JOHN W. CLANCY,
U. S. D. J.

June 16th, 1938.

Petition of Irving Trust Company as Executor for Leave to Intervene in Proceedings to Vacate. 895

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,

Plaintiffs,

against 896

HOWARD SUTHERLAND, as Alien Property Custodian, FRANK WHITE, as Treasurer of the United States and ZENTRAL EINKAUFS-GESELLSCHAT, m. b. H.,

Defendants.

Equity No. 44-28

In proceedings to vacate final decree of December 30, 1929.

The petition of Irving Trust Company as Executor of 897 the last Will and Testament of Hermann Sielcken, deceased, respectfully shows to this Court:

1. That on the 26th day of January, 1918, the name of this corporation, the Irving Trust Company, was Columbia Trust Company, and at various times between 1918 and 1930 was changed, until it finally, to wit, on the 1st day of February, 1929, became Irving Trust Company, which ever since has been and is now its true name. And it is still through all its changes of name the same corporation as the Columbia Trust Company.

That on the 8th day of October, 1917, Hermann Sielcken died, but that information of his death was not obtained in the United States until on or about the 17th day of December, 1918; that promptly after the information of his death was received this corporation filed his will for probate in the Surrogate's Court for

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New York County, which had jurisdiction to admit the same to probate, and pending probate thereof said Columbia Trust Company obtained temporary letters of administration of the estate of said Hermann Sielcken from said Surrogate's Court, to wit, on the 27th day of December, 191[illegible], and thereafter, to wit, on the 26th day of January, 1918, said will was admitted to probate by the said Surrogate's Court and letters testamentary were immediately issued by it to the Irving Trust Com-
899 pany under its said former name of Columbia Trust Company, which has duly qualified as such, and that it has ever since been and now is the executor of the last will and testament of said Hermann Sielcken, deceased, as to all the American assets of the said decedent Sielcken, including all his interest and rights in the former partnership of Crossman & Sielcken of which he and the above named John S. Sorenson and Thorleif S. B. Nielsen had been the sole members; that said Thorleif S. B. Nielsen died, to wit, on the 9th day of September, 1930, subsequent to the entry of the final decree herein and to the payment of the sum thereby awarded, and the above named John S. Sorenson is now the sole
900 surviving member of said former firm of Crossman & Sielcken.

2. On information and belief that the above entitled suit was commenced on or about the 21st day of December, 1927. That the defendants Howard Sutherland as Alien Property Custodian and the Treasurer of the United States jointly and the Zentral Einkaufs Gesellschaft, severally, each appeared and answered in the cause; and thereafter the same was tried in this court in December, 1929, before Hon. Francis G. Caffey, a Judge of this Court, and on the 30th of December, 1929, final decree was entered herein by this Court awarding to the plaintiffs the sum of $716,160.37 upon the cause of action set up in the bill of complaint, which, with accrued interest thereon from the entry of the decree, was thereafter paid by the defendant, the Treasurer of the United States, to the said plaintiffs, to wit, on the

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8th day of April, 1930. That the term of this Court at which such decree was entered expired in 1930. That no appeal was ever taken from the said decree and that the time for any appeal therefrom elapsed during the year 1930.

Copies of the bill of complaint and of the several answers in the said cause and of the said final decree herein, save only the Exhibit attached to the answer of the Treasurer and Alien Property Custodian, which is on file in this Court, are hereto annexed marked respectively Exhibits A, B, C and D and hereby made parts of this applicaton. 902

No appeal was ever taken from such decree and the time for appeal long since elapsed. No motion for a new trial was ever made. Nor has any bill of review ever been filed in connection with such decree.

3. Your petitioner further shows, on its information and belief, that subsequent to the recovery of said decree of December 30, 1929, dispute arose between said Sorenson and said Nielsen's Ancillary Executor, the Chase National Bank of New York, on the one part, and your petitioner, the Irving Trust Company as executor of Hermann Sielcken, deceased, on the other part, as to the rights of the said Sorenson and said Nielsen respectively to any part of the sums so recovered and other sums received under a claim allowed by the Mixed Claims Commission—United States and Germany, as their alleged shares of the profits of the firm of Crossman & Sielcken, and an action was instituted in the Supreme Court for New York County by the Chase National Bank as Ancillary Executor of said Nielsen to recover twelve and one-half per cent of the net amounts of such recoveries, as his share of such profits. Said Sorenson was made a defendant in that action as was also the Irving Trust Company as such Executor and Clara Sielcken Schwarz, the widow of said Sielcken as residuary legatee under his will. That in that action said Sorenson also counterclaimed, making the like claim as the executor of said Nielsen to a like share 903

904 of the sums so recovered as his share of the profits, and in that action said Sorenson also counterclaimed, asserting as he had previously asserted that as sole surviving partner of the firm of Crossman & Sielcken he was entitled to receive all the moneys recovered on behalf of the firm and to liquidate the same; and in that action a judgment was rendered on November 11, 1933, a copy of which is annexed to the affidavit of Frank C. Sterck on behalf of the Attorney-General, on which is based
905 the application of the Attorney-General to vacate the said decree herein of December 30, 1929, hereinafter mentioned, being Exhibit Z of that affidavit. Said judgment was rendered after a long trial before Hon. Henry F. Wolff, the Referee appointed to hear and determine the same, which trial had been begun before him in December, 1931, and in which the question as to the right to liquidate the firm assets had been litigated and argued at great length between said Sorenson and this Trust Company as Executor of said Sielcken.

Your petitioner further shows that thereafter and under and pursuant to the judgment so rendered in that action in 1933, a large portion of the sums which
906 had been recovered by said Sorenson and said Nielsen under and by virtue of said decree of this Court of December 30, 1929, was turned over to your petitioner as executor of Hermann Sielcken, deceased, for administration by it as such executor.

Your petitioner further shows, on its information and belief, that said John S. Sorenson is wholly without means and has informed your petitioner that he has no means with which to contest the said application of the Attorney-General to vacate said decree; and that the service of notice of such application on the Ancillary Executor of Nielsen has been, with the consent of the Attorney-General of the United States, directed to be cancelled.

Your petitioner further shows that in said action in the Supreme Court of the State of New York the question whether said Sorenson and said Nielsen had the

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right to maintain the present suit as surviving liquidating partners of the firm of Crossman & Sielcken was not litigated or in issue; that in point of fact in June, 1918, years before this administrator had any knowledge or information whatsoever of the existence of the claim which was asserted in the suit in this court, this executor had sent said Sorenson and Nielsen a letter, of which copy is hereto annexed, marked Exhibit E and hereby made a part of this petition; and the said Sorenson and Nielsen had accepted the same and had, in 908
1918, brought an action in their names as surviving liquidating partners of the firm of Crossman & Sielcken in the Supreme Court for New York County, against George C. Boldt and Clover Boldt Miles, as Executors of George C. Boldt, deceased, which action was compromised before trial by the payment of approximately $100,000 to the firm of Crossman & Sielcken, which sum was turned over to your petitioner upon recovery thereof, for administration. That as your petitioner is advised and believes, the said letter and acceptance thereof and action thereunder constituted an agreement amending the provisions as to liquidation of the partnership affairs to the limited extent therein provided; that that 909
authorization was given in entire good faith and with no special reference to the particular claim asserted nine years later in the said suit of 1927 in this Court, the existence of which claim was unknown to your petitioner until May, 1927.

Your petitioner is further informed and believes that the position claimed by said Sorenson and Nielsen to be entitled to sue as liquidating partners was in 1927 and prior to May, 1930, supported by the opinions of many members of the bar, including, as your petitioner is informed and believes, the firm of Davies, Auerbach & Cornell, who instituted the 1918 Boldt action in the names of Sorenson and Nielsen as surviving liquidating partners of the firm of Crossman & Sielcken, in which by a compromise the said sum of approximately $100,000 was collected in 1919; also by the firm of

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Griggs, Baldwin & Baldwin, who appeared for the defendant in that action, and made the compromise; by the firm of Tibbetts, Lewis & Rand, who appeared for the defendant Sorenson in said action brought by the Chase National Bank as ancillary executor of Nielsen, and, as your petitioner is informed and believes, by all the attorneys who appeared for the plaintiffs in the present suit.

Your petitioner further shows on its information and
911 belief that all the facts on which the judgment of November 11, 1933, adjudging that said Sorenson did not hold the position of liquidator of the firm of Crossman & Sielcken were fully known to the Alien Property Custodian at the time of the trial of this suit of Sorenson and Nielsen in this court; that the decision of the Supreme Court of New York that Sorenson was not a liquidating partner was predicated on the Articles of Co-partnership, which were put in evidence before the Court in this suit during the trial thereof, and on the will of said Hermann Sielcken, of which the Alien Property Custodian had been fully advised by the proceedings on the first accounting of the Columbia Trust Com-
912 pany as such executor in 1919, on which accounting the Alien Property Custodian had appeared and filed objections, and was predicated in addition to some extent on the fact that said Sorenson and said Nielsen had been paid nearly $50,000 apiece by the Executor of Sielcken as the executor's assistants in liquidating the affairs of Crossman & Sielcken, to no part of which they would have been entitled had they been actually liquidating partners in the ordinary sense; that a very large part of said payments to them (which consisted of $1,000 a month apiece, pursuant to the provisions of the will of said Sielcken) were set forth in the said first account of the executor, to which accounting before the Surrogate the Alien Property Custodian was made a party, and appeared. The Alien Property Custodian knew also in 1927, of the settlement made in December, 1917, with Sorenson and Nielsen for their shares of the profits

of the firm, for that settlement had been made under the directions of the Alien Property Custodian. He also interposed an objection to the payments made under that settlement upon the first accounting before the Surrogate in 1919, and expressly withdrew that objection in May, 1921. Thus, long before the commencement of this suit in this court the Alien Property Custodian was fully advised of all the facts on which the Supreme Court for New York County on full consideration finally held in 1933 that the Irving Trust Company as executor of said Sielcken was entitled to receive and hold and 914 administer the funds recovered under the said decree herein.

That among the sums received under the said decree and turned over to this executor of Sielcken was $230,000 United States Bonds which had been received from the Treasurer of the United States in part payment of said decree of this Court. $100,000 of these bonds were distributed and turned over by this executor to the residuary legatee under said Will, said Clara Sielcken Schwarz, in 1931, as a partial distribution of the estate of said Hermann Sielcken.

Your petitioner further alleges, on its information 915 and belief, that both said Sorenson and said Nielsen at the time of bringing this suit in this court in 1927, in good faith believed that they were entitled to sue as sole surviving partners of the firm of Crossman & Sielcken, and so did each of the attorneys who appeared for the plaintiffs in this suit.

Your petitioner, on its information and belief, further shows that at the time this suit was brought, and until long after entry of the decree herein of December 30th, 1929, Sorenson and Nielsen and their attorneys in the suit each believed that whatever interest might have been once claimed by the firm of Theodor Wille in the claims asserted by the bill in this case had been wholly satisfied and abandoned, as a result of certain proceedings taken in Germany by the German executors of said Sielcken against the above-named

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Zentral Einkaufs Gesellschaft m.b.H. and of certain agreements entered into between said German executors of Hermann Sielcken, deceased, and members of the firm of Theodor Wille with the said Zentral Einkaufs Gesellschaft; and, as your petitioner is informed and believes, neither said Sorenson nor said Nielsen nor their attorneys, at the time of commencing this suit, or at any time prior to March, 1930, had any idea that either the said firm of Theodor Wille or the said Zen-
917 tral Einkaufs Gesellschaft had or claimed to have any interest whatsoever in any sum recovered in this suit by the plaintiffs.

Your petitioner further shows that the Attorney-General of the United States has voluntarily appeared in proceedings for an accounting by this executor of the said estate now pending in the Surrogate's Court for the County of New York and has therein filed a so-called objection to the account of this executor, of which a true and correct copy is hereto annexed, marked Exhibit F, and hereby made a part of this petition.

Your petitioner further shows that in the early part of the year 1927, your petitioner, believing that it had
918 fully liquidated the American estate of said Hermann Sielcken, rendered a full, final, extra-judicial, voluntary account of its administration of the estate to said Clara Sielcken Schwarz, the sole residuary legatee and the only person then interested in the estate other than this executor, and paid and distributed to her the full amount of the estate then remaining in the executor's hands, believing that the estate had thereby been fully wound up.

Thereafter and in May, 1927, said Clara Sielcken Schwarz, then the only person interested in the estate other than this executor, advised this executor that she had discovered certain additional assets of the firm of Crossman & Sielcken which had been until then wholly unknown to this executor, and which were not shown on the firm books of Crossman & Sielcken or in its files, consisting of the claim asserted in this suit and

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a certain other claim which was asserted before the Mixed Claims Commission.

Without revealing to the executor the exact nature of these claims, Mrs. Sielcken Schwarz then arranged with the executor (which then held no funds available for the purpose) that she would prosecute such claims at her own expense and costs and by such attorneys as she might employ for that purpose, either in the name of the executor or otherwise, as she might be advised; that it was pursuant to that arrangement that she

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brought this suit by her own attorneys in the names of said Nielsen and said John S. Sorenson as surviving members of the said former firm of Crossman & Sielcken against the said Zentral Einkaufs Gesellschaft and the Alien Property Custodian and the Treasurer of the United States, and on December 30, 1929, they obtained the said decree of this Court which is now sought to be vacated. This executor took no other part in the proceedings than, upon the request of the said Clara Sielcken Schwarz and her attorneys and their representations that the settlement was an advisable one, and had been already approved by the Government authorities, by Zentral Einkaufs Gesellschaft, by the

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firm of Theodor Wille and by the said Clara Sielcken Schwarz, and their respective attorneys, to approve the compromise arrived at; and that it ultimately received under the judgment of November 11th, 1933, in the State Court action the moneys so recovered less such disbursements as had been made therefrom, all as more fully shown in its pending accounting before the Surrogate for the County of New York, to which the Attorney-General has, on his own application, been made a party; save and except only that under the permission so given to said Clara Sielcken Schwarz this executor was joined as a party by her authority to the two Memorials filed with the Mixed Claims Commission, one with regard to the claim involved in this suit and one with regard to the claim involved in another proceeding before the Mixed Claims Commission against

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the firm of Theodor Wille and the German Government, and a former officer of this petitioner joined Sorenson and Nielsen in verifying such Memorials.

Your petitioner further shows on its information and belief and will produce proofs that the compromise so entered into and approved by it was a compromise of claims made in the said proceeding before the Mixed Claims Commission and approved by the United States Government authorities with the knowledge of the At-
923 torney-General's office.

Your petitioner further shows that there was no fraud on its part in the institution or maintenance of this suit or the recovery therein; and, on its information and belief, that there was no fraud on the part of either the plaintiffs in this suit or any of their attorneys or counsel in bringing the suit as they did.

Your petitioner further shows that if there was an invalidity to the claim asserted by the plaintiffs in this suit it was a matter that should have been asserted by the defendants in the suit; that in fact the Alien Property Custodian and the Treasurer of the United States and the Zentral Einkaufs Gesellschaft by their said
924 answers put in issue the right of the plaintiffs in this suit to maintain the action; that the proofs on that issue were submitted to this Court and were passed upon by it, and the plaintiffs held entitled to maintain the suit as such surviving liquidating partners. Your petitioner is further advised and believes that this question having been adjudged by this court on an issue presented in the cause, and actually tried therein, is conclusive; and even if the decision thereon were erroneous, the same was merely ground for consideration and reversal upon appeal therefrom; and cannot be made the basis of an application to vacate this decree for want of jurisdiction, a rule repeatedly expressed by the Supreme Court of the United States for a century past, holding that a decision by the Trial Court on any question of its jurisdiction of the subject-matter or the capacity of the parties presented to

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it is equally conclusive as any other determination contained in the decree.

Your petitioner further alleges that the issues of the Court's jurisdiction of this cause, and of the capacity of the plaintiffs therein to maintain the suit, were determined by the Court by its said decree of December 30th, 1929, and are conclusive against the present attack on said decree, and cannot now be reopened.

Your petitioner further shows that no notice of the application to vacate the decree herein has been given 926
to your petitioner, although the Attorney-General has been at all times, even before making the application fully aware that your petitioner has a direct interest in property acquired under and by force of the said decree of this Court. On the contrary, the Attorney-General, in giving his notice, has served it only on John S. Sorenson and on the Chase National Bank as alleged Ancillary Administrator of Thorleif S. B. Nielsen; but upon its being shown that said Chase National Bank was never appointed administrator of said Thorleif S. B. Nielsen but was his executor appointed in New Jersey and his ancillary executor appointed in New York, but had been discharged in each capacity after full account- 927
ing by the Courts of New York and New Jersey, consented to the cancellation of its service of notice of this motion on the Chase National Bank; that he has made no attempt to serve any notice on the Treasurer of the United States or on the Zentral Einkaufs Gesellschaft, defendants in this suit, and has avoided giving any notice of the application to your petitioner or putting your petitioner in a position to oppose the said motion.

Your petitioner further shows that the assertions in the affidavit of Mr. Sterck upon which the application to vacate the said decree is based are in many vital respects completely at odds with the actual facts, which your petitioner is ready and prepared to show, to wit, that the Alien Property Custodian never seized the assets of the firm of Crossman & Sielcken, and in particular never attempted to seize the claim that was as-

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serted by the bill of complaint in this suit; that he never declared the firm of Crossman & Sielcken an enemy; that he never declared that Hermann Sielcken was an enemy or attempted to seize his property; that in point of fact he could not, because said Sielcken died prior to the appointment of any Alien Property Custodian and only two days after the passage of the Trading with the Enemy Act; that at the time of the passage of the Trading with the Enemy Act the said Sielcken was on his
929 death-bed, unable to be moved, and died within forty-eight hours of the passage of that Act, at Baden Baden in Germany; that the only thing in the nature of seizure of any property of the firm by the United States was a license granted by the War Trade Board in November, 1917, several weeks after the death of Sielcken, though in ignorance of his death, giving permission to said Sorenson and Nielsen to liquidate the affairs of the firm under supervision of the Alien Property Custodian.

That in and by said license the War Trade Board directed said Sorenson and Nielsen to account to the Alien Property Custodian for the interest of the enemy partner, without designating who the enemy partner
930 was, and in entire ignorance that Hermann Sielcken (who was probably intended) had died over five weeks before the issue of said permit, and in like ignorance that his interest had already vested in his executor.

The Alien Property Custodian by that permit was given power to exercise such supervision by an Agent, and he appointed the Columbia Trust Company as his agent for that purpose on the 30th of November, 1917, over seven weeks after the death of Sielcken.

Less than three weeks later the information came in that Sielcken was dead and thereupon the Columbia Trust Company as executor named in his will presented his will for probate and applied for temporary letters of administration pending probate of the will and also for testamentary letters when probated.

The Surrogate's Court handed down a decision on the 26th day of December, 1917, directing the issue of tempo-

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rary letters of administration to the Columbia Trust Company, and this Company at once wrote to the Alien Property Custodian, calling attention to the facts and pointing out that there had been no seizure of Sielcken's property and requesting that it, as such temporary administrator and later as executor, should be allowed to go ahead and administer his estate and take charge of the liquidation of the affairs of Crossman & Sielcken pursuant to his will and the Articles of Copartnership.

The Custodian on the 14th day of January, 1918, wrote 932
accepting and acknowledging this situation, but pointing out that it would be necessary for the executor to get a new license from the War Trade Board and that upon doing so it might at once go ahead as temporary administrator and thereafter as executor if so appointed to administer the entire estate, thus withdrawing all prior claims. A copy of such letter of January 14, 1918, is hereto annexed marked Exhibit G.

The War Trade Board thereupon issued new licenses, both to Sorenson and Nielsen and to the Columbia Trust Company as temporary administrator and executor, to proceed with such liquidation, and in doing so cancelled the former permit with its requirement that Sorenson and 933
Nielsen should account to the Alien Property Custodian for the interest of the "enemy partner," substituting therefor a provision, in the new license to Sorenson and Nielsen, "that the licensees shall transfer to the Alien Property Custodian *whenever he shall so require* the whole or any part of the share of said estate of Hermann Sielcken, deceased, in the proceeds of the aforesaid liquidation." That no such provision was contained in the license then given to the Columbia Trust Company as temporary administrator and executor.

The temporary administrator thereupon took over possession of such assets of the firm of Crossman & Sielcken as had previously been taken possession of by it as agent of the Alien Property Custodian, consisting only of various securities, to wit, on the 23rd of January, 1918. Until such appointment of your petitioner as temporary administrator, the actual liquidation of the firm had been

934 *Petition of Irving Trust Company as Executor for Leave to Intervene in Proceedings to Vacate*

conducted by said Sorenson and said Nielsen as the partners in possession.

Your petitioner further shows that thereafter, in October, 1918, the Alien Property Custodian declared that Clara Sielcken Schwarz and certain German legatees specifically named in the will of Herman Sielcken were enemies and demanded of this Executor that their respective shares in the estate of said Hermann Sielcken be paid to him in place of to them; thus abandoning any
935 claim he might previously have suggested, though not formally made, to any assets of the firm or of the estate of Herman Sielcken. The chief of the legatees so named in this demand was Clara Sielcken Schwarz, the widow of said Herman Sielcken and residuary legatee of his estate. All rights of other persons named as enemies in said demand lapsed.

Said Clara Sielcken arrived in New York in October, 1919, and thereupon made application to the Alien Property Custodian for the release of her interest under the will of Herman Sielcken and also for the release of various other property, belonging to her individually, which the Custodian had seized; she claimed that said Hermann
936 Sielcken had been naturalized as an American citizen and that she was, therefore, an American citizen and was entitled, now that she had returned to this country, to recover her property and her interests in his estate from such seizure. Objection was raised by the Alien Property Custodian on the score that there was no record of naturalization of the said Hermann Sielcken. She thereupon brought a suit in California to re-establish the record of naturalization of said Hermann Sielcken under California law on a claim that such record had been destroyed in the San Francisco fire and earthquake.

In that proceeding the Alien Property Custodian appeared and contested, but the Court, after full hearing, restored the record by decree, and the Alien Property Custodian thereupon appealed from that decree, and on appeal the same was affirmed.

After affirmance of said decree in April, 1921, the Alien Property Custodian and the Attorney General released

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entirely the claim to take over the interest of said Clara Sielcken (now Clara Sielcken Schwarz) in the estate of Hermann Sielcken and also released her individual property which had been seized by the Alien Property Custodian, and at the same time the Alien Property Custodian notified this executor that it could proceed with the administration and distribution of the estate just as if the Alien Property Custodian had never demanded the interest of said Clara Sielcken; and shortly thereafter he withdrew the objections he had filed to the first account of the executor and afterwards was cited upon the second account of the executor, on which accountings decrees were entered showing and establishing the release of said claims of the Alien Property Custodian and that large sums, amounting to considerably over one million dollars had been distributed by the Executor to Mrs. Sielcken as residuary legatee.

938

Your petitioner is further prepared to produce evidence, practically conclusive, that at the time of instituting this suit and of presenting that claim under the Trading with the Enemy Act to recover, the plaintiffs in this action did not know nor believe that the executor was the sole owner of the alleged debt, which was the basis of the claim or of this suit, and your petitioner is prepared to question the assertion in the moving affidavit that the executor was precluded by law from maintaining such a suit by reason of the facts in the case.

939

Your petitioner also desires to deny all the allegations in paragraph numbered 4 of the affidavit of the said Sterck, and present proofs that the merchandise in question did not belong in equal undivided shares to the firms of Crossman & Sielcken and Theodor Wille respectively; and that the shipment and sale thereof was not for their joint account or a joint venture.

Your petitioner also alleges on its information and belief, and desires to show, that the compromise agreement entered into before the Mixed Claims Commission was made on ample information to the Attorney General and the Alien Property Custodian and was approved by them, and that it was a compromise that did not grow out of the

940 *Petition of Irving Trust Company as Executor for Leave to Intervene in Proceedings to Vacate*

claim asserted by the bill of complaint in this suit but was a compromise of other subsequent claims, which could be asserted in Germany against the ample German estate of said Hermann Sielcken, which was also bequeathed to said Clara Sielcken Schwartz, and that the arrangements for using funds recovered by the decree in this case was simply a matter of convenience of using funds immediately available instead of funds which came in four or five weeks later under the award of the Mixed Claims Commission exceeding all sums paid under the compromise;
941 also that the payments made pursuant to said compromise were fully known to the United States Government and to the Attorney General and were made with their approval.

Your petitioner has no knowledge or information sufficient to form a belief concerning the allegations as to the conduct of the suit on behalf of the Zentral Einkaufs Gesellschaft.

Your petitioner is further informed and believes that the tentative agreements made in Berlin in March, 1928, were not for a compromise of the claim asserted in this cause but were negotiations for a compromise of other
942 claims asserted before the Mixed Claims Commission; and, as far as your petitioner is informed and believes, all suggestions concerning the use of the funds recovered under this judgment for effecting the compromise agreed to of the claims before the Mixed Claims Commission, were made subsequent to the entry of the final decree herein, and that such final decree was not predicated thereon.

Your petitioner further shows that the moving papers presented by the Attorney General on this application are very extensive, some 240 pages in length, and are replete with errors of fact and of law; that the preparation of answering papers showing the exact status of affairs will take a very considerable amount of time; that several persons from whom it will be necessary to procure affidavits are not at present within the State of New York and will not return for some days, and that a reasonable time is necessary to prepare a full record showing the entire situation.

Your petitioner further shows that no appeal has ever been taken from such final decree of December 30, 1929, that no motion for a new trial was ever made in this cause nor has any bill of review ever been brought to review such decree; that the final decree of this court is, as your petitioner is informed and believes, conclusive against the claims now sought to be raised and is not subject to any attack of the present character; that if the Attorney General claims that the decree was obtained by fraud perpetrated on the court, his proper method of application is by a bill to review on the ground of fraud 944
perpetrated by the plaintiffs; that the Supreme Court of the United States in the case of United States v. Throckmorton, 98 U. S. 61, held, many years ago, that a bill of review containing just as complete allegations as the Attorney General makes in this case, was fatally defective in substance and sustained a demurrer thereto; that the equivalent of every allegation made in this case was made in that case, and the Court held those allegations insufficient to justify opening the decree on the ground of fraud on the court.

Other decisions of that court establish fully the rule that the fact that the matter here sought to be attacked is a 945
finding that the Court had jurisdiction, does not alter the rule so established in the Throckmorton case.

Your petitioner is further informed and believes that the motion of the Attorney General to vacate the said decree is now expected to appear on the motion calendar of this Court for the 21st day of June, 1938.

No previous application has been made by your petitioner for any order to show cause or stay of any kind in this suit.

Wherefore your petitioner prays that it be allowed to intervene on this application to vacate said decree of December 30th, 1929, and defend against this motion to vacate the same as one who has acquired interests under the decree sought to be vacated and is entitled to be heard on any application to vacate the same; that it be allowed to do so without any prejudice by reason of the fact that it prays to intervene instead of having been originally

946 *Petition of Irving Trust Company as Executor for Leave to Intervene in Proceedings to Vacate*

cited by the Attorney General upon the motion; that it be allowed a reasonable time, not less than twenty days, in which to prepare answering papers on the motion; and for such other and further relief in the premises as may be just.

And your petitioner further prays that the hearing and determination of such motion to vacate the said decree be stayed until your petitioner has opportunity to present its answer to the claims made by the Attorney General, and
947 to be heard on the application.

LEONARD B. SMITH AND SELDEN BACON,
Attorneys for Petitioner,
Office & Post Office Address,
15 Broad Street,
Borough of Manhattan,
New York City, New York.

State of New York,
County of New York,
Southern District of New York,

Paul E. Mead, being duly sworn, deposes and says:

948 That he is a Vice President of the Irving Trust Company, the abovenamed petitioner; that he has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and as to those matters he believes them to be true; that this verification is made by him as an officer of the Irving Trust Company because it is a corporation and cannot itself verify this petition; that he as such officer who has had supervisory charge for several years past of the administration of the estate of said Hermann Sielcken; that the sources of his information and the grounds of his belief as to the allegations made on information and belief are the records and files in the various suits and actions referred to in the foregoing petition, the records and files of the Irving Trust Company, and the information derived from its own attorneys who appeared for it in the said action of the Chase National Bank vs. Sorenson and this executor and others, and who conducted that and other

Petition of Irving Trust Company as Executor for Leave to Intervene in Proceedings to Vacate 949

litigation for this petitioner involving the history of these matters, and from their examination of the records in the Alien Property Custodian's office and in the files of the Mixed Claims Commission and in the other proceedings mentioned in said petition; and indirectly from the above-named John S. Sorenson, and from the attorneys who conducted the present suit on behalf of the plaintiffs therein, and deponent believes said allegations to be true as alleged.

PAUL E. MEAD. 950

Sworn to before me this
16th day of June, 1938.
M. Paul,
M. Paul, Notary Public, Kings Co.
Kings Co. Clk. No. 5, Reg. No. 108
Certificate filed in N. Y. Co. Clk. No.
42, Reg. No. 0-P-29
Queens Co. Clk. No. 331, Reg. No. 1962
Bronx Co. Clk. No. 8, Reg. No. 49-P-40
Westchester Co. Suffolk Co. Nassau Co. 1-p-40
Commission expires March 30, 1940.

(Notarial Seal) 951

952 **Exhibit A of Petition for Leave to Intervene.**

Bill of Complaint.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken, 953 Plaintiffs, against HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL-EINKAUF-GESELLSCHAFT, m. b. H., Defendants.	Equity No. 44-28.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York, sitting in Equity:

954 John S. Sorenson, a citizen of the State of New York, residing in the City, State and Eastern District of New York, and Thorleif S. B. Nielsen, a citizen of the State of New Jersey, residing in the City of Hackensack, State and District of New Jersey, as surviving partners of the firm of Crossman & Sielcken, residing in the City, State and Southern District of New York, bring this, their bill of complaint against Howard Sutherland, as Alien Property Custodian, duly qualified and acting under the Trading with the Enemy Act, as amended, Frank White, as Treasurer of the United States, and Zentral-Einkaufsgesellschaft, m. b. H., a corporation organized under the laws of Germany, with its last known principal place of business in Berlin, Germany, and allege and show:

FIRST: At all the times hereinafter mentioned the plaintiffs, John S. Sorenson and Thorleif S. B. Nielsen, and one Hermann Sielcken, all being citizens and residents of the United States, were engaged in business as exporters, importers and commission merchants, as copartners doing business under the firm name and style of Crossman & Sielcken, and said partnership continued its said business in regular course, up to the date of the death of said Hermann Sielcken, as hereinafter set forth.

SECOND: Said partnership of Crossman & Sielcken at all times has had its principal place of businesss in 956
the Borough of Manhattan, City, State and Southern District of New York, and has been and is a resident of said Borough of Manhattan, City and State of New York, and has not at any time been a resident within territory (including that occupied by the military and naval forces) of any nation with which the United States was at war and was not, nor at any time has it been, an enemy or ally of enemy within the meaning and purview of those terms as used and defined in the Act of October 6, 1917, known as and herein referred to as the Trading with the Enemy Act, or in any act amendatory thereof and supplemental thereto or in any proclamation 957
or executive order issued by the President of the United States pursuant to Subsection (c) of Section 2 of said Trading with the Enemy Act.

THIRD: The defendant, Howard Sutherland, is a citizen of the United States, and is the duly appointed and qualified Alien Property Custodian, and has his official residence in the City of Washington, District of Columbia.

FOURTH: The defendant, Frank White, is a citizen of the United States and is the duly appointed and qualified Treasurer of the United States and has his official residence in the City of Washington, District of Columbia.

FIFTH: Upon information and belief, the defendant, Zentral-Einkaufsgesellschaft, m. b. H., hereinafter re-

958 *Exhibit A of Petition for Leave to Intervene*

ferred to as Z. E. G., is a corporation organized in or about the month of January, 1915, under the laws of Germany with its principal place of business in the City of Berlin, Germany, and succeeded to and took over all of the business, assets and liabilities of the enterprise theretofore operated by the Reichseinkauf, which was a purchasing agency of the then Imperial German Government, having its principal place of business in the City of Berlin, Germany.

SIXTH: This bill is filed pursuant to the provisions
959 of Section 9 of the Trading with the Enemy Act, as amended, and this court has jurisdiction to entertain the same under the express terms of said section, as amended.

SEVENTH: On or about the 24th day of September, 1914, the said Reichs-einkauf entered into an agreement with said Crossman & Sielcken, under the terms of which said firm was employed to purchase for account of said Reichseinkauf mixed cargoes of wheat, tea, cocoa and mixed animal feed, to be shipped by neutral vessels from American ports to neutral Baltic ports and said firm of Crossman & Sielcken was to be reimbursed for
960 the invoice price, plus freight and insurance, and to be paid a commission of 10% on the value of the cargo as indicated by the total amount of the invoice, freight and insurance.

EIGHTH: Thereafter said Reichseinkauf and its said successor, Z. E. G., instructed said Crossman & Sielcken to stop shipments of wheat and flour and in their place to purchase pure lard, fat backs, near backs, short backs, clear backs, cakes and cereals.

NINTH: Thereafter and between, on or about February 27, 1915, and April 28, 1915, pursuant to said agreement and instructions, certain merchandise of the character above mentioned was purchased by said Crossman & Sielcken for account of Z. E. G. and was shipped in the vessels listed below, consigned to Harry Levin or

Beckmann & Jorgensen, agents of Z. E. G. at Copenhagen, Denmark:

SS Hilding, sailed February 27, 1915, consigned to Harry Levin,

SS Arkansas, sailed March 23, 1915, consigned to Harry Levin,

SS Hellig Olav, sailed March 30, 1915, consigned to Harry Levin,

SS Gunborg, sailed April 23, 1915, consigned to Harry Levin,

SS Indianic, sailed April 23, 1915, consigned to Beck- 962
mann & Jorgensen,

SS Oscar II, sailed April 28, 1915, consigned to Beckmann & Jorgensen.

Said shipments were seized by the British naval authorities and were condemned in the British Prize Court as lawful prizes and said Crossman & Sielcken have not been reimbursed for the invoice value of said cargoes, insurance and freight nor paid any part of their 10% commission on said shipments except for a payment on account of certain crackers and cereals on said SS Oscar II.

TENTH: The invoice value, including freight and 963
insurance, upon said cargoes, together with the amount of commission due said Crossman & Sielcken thereon pursuant to said agreement, amounted to the sum of $388,811.98, and the payment made to said Crossman & Sielcken on account of said crackers and cereals on SS Oscar II, amounted to $8,050.44, leaving a balance due the said partnership of Crossman & Sielcken from Z. E. G. of $380,761.54, with interest on $84,472.08 thereof from April 17, 1915; on $105,135.12 thereof from April 27, 1915; on $83,938.02 thereof from May 11, 1915; on $48,396.88 thereof from June 13, 1915, and on the remaining $58,818.44 thereof from June 23, 1915, no part of which has been paid.

ELEVENTH: On or about the 8th day of October, 1917, the said Hermann Sielcken died leaving the plain-

964 *Exhibit A of Petition for Leave to Intervene*

tiffs the only surviving partners of the said firm of Crossman & Sielcken and said partnership pursuant to Section 61 of the Partnership Law of the State of New York, thereafter continued for the purpose of winding up its affairs and this suit is brought pursuant to said purpose and to enforce the rights given said partnership under Section 9, Subdivision (a) of the Trading with the Enemy Act, as amended.

TWELFTH: Upon information and belief the defendant, Howard Sutherland, as Alien Property Custodian,
965 and Frank White, as Treasurer of the United States, now hold property and/or money in a Trust designated No. 592, approximating $669,155.00, which was heretofore conveyed, transferred, assigned, delivered or paid to the then Alien Property Custodian or seized by him under the provisions of the Trading with the Enemy Act as property and/or money owned or belonging to or held for, by, on account of or in behalf of, or for the benefit of said Z. E. G., which became and was and now is an enemy within the meaning and purview of that term as used and defined in the Trading with the Enemy Act.

966 THIRTEENTH: On or about the 12th day of November, 1927, the plaintiffs as surviving partners of said firm of Crossman & Sielcken, duly made and filed with the Alien Property Custodian a notice of their claim, under oath, in the form and containing the particulars required by said Custodian, in conformity with the provisions of Section 9 of the Trading with the Enemy Act, as amended, and have made no application to the President of the United States to order the payment, conveyance, transfer, assignment or delivery to the plaintiffs, or said property and/or money or of any portion thereof and the President has made no such order.

For as much as the plaintiffs cannot have adequate relief except in this court and to the end that the defendants may make full disclosure and discovery of the matters aforesaid and full, true and perfect answer

make to the matters hereinbefore stated and charged, but not under oath, an answer under oath being hereby expressly waived, the plaintiffs submit their rights in the premises to this Honorable Court and pray that this Court enter its decree herein establishing the debt claimed by the plaintiffs to be due and owing the said partnership of Crossman & Sielcken from the defendant Z. E. G. and ordering the payment thereof to the plaintiffs as surviving partners of said firm of Crossman & Sielcken by defendants, Howard Sutherland and Frank White, out of the property and/or money held by them to the 968 credit of Trust No. 592, in the name of said Z. E. G.

May It Please Your Honors to grant to the plaintiffs a writ of subpoena of the United States of America directed to said Howard Sutherland as Alien Property Custodian and to said Frank White, as Treasurer of the United States and to said Zentral-Einkaufsgesellschaft, commanding them on a day certain to appear and answer to this bill of complaint and obey and perform such order and decree in the premises as to the court shall seem proper and required by the principles of equity and good conscience.

EARL B. BARNES, 969
BRAINARD AVERY,
Solicitors for the Plaintiffs,
Office and Post Office Address,
No. 100 Broadway,
Borough of Manhattan,
New York City.

Charles D. Hamel,
Richard S. Doyle,
Counsel,
906 Southern Bldg.,
Washington, D. C.

970 **Exhibit B of Petition for Leave to Intervene.**

Answer of Defendant Zentral Einkaufs Gesellschaft, m. b. H.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

971 JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs,
against
HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL-EINKAUF-GESELLSCHAFT, m. b. H.,
Defendants.

Equity No. 4428.
Answer.

Answer.

972 Defendant, Zentraleinkaufsgesellschaft, m. b. H., does hereby through Arthur Garfield Hays, its solicitor, for an answer to the complaint herein, respectfully show to the court:

1. Defendant admits that prior to the outbreak of war between the United States and Germany on April 6th, 1917, John S. Sorenson, Thorleif S. B. Nielsen and one Hermann Sielcken were engaged in business as exporters, importers and commission merchants, as co-partners doing business under the firm name and style of Crossman & Sielcken, but except as herein specifically admitted, denies each and every allegation contained in paragraph marked or numbered "First" of the complaint.

2. Defendant admits that the said partnership of Crossman & Sielcken at all times had its principal place of

business in the Borough of Manhattan, City, State and Southern District of New York, but except as herein specifically admitted, denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked or numbered "Second" of the complaint.

3. Defendant denies each and every allegation contained in paragraphs marked or numbered "Seventh" and "Eighth" of said complaint.

4. Answering paragraph "Ninth," defendant admits 974
that Crossman & Sielcken have not been reimbursed for the invoice values of the cargoes referred to therein, plus insurance and freight, nor paid any commission thereon, and that shipments were made on the vessels therein named; denies knowledge or information sufficient to form a belief as to the allegations that the shipments referred to therein were seized by the British Naval authorities and were condemned in the British Prize Court as lawful prizes; and, except as herein specifically admitted, denies each and every allegation contained in said paragraph marked or numbered "Ninth" of said complaint.

5. Defendant is without knowledge as to the aver- 975
ments of Paragraph "Tenth" of the bill of complaint and therefore demands strict proof thereof.

6. Defendant admits that said Hermann Sielcken died on or about the 8th day of October, 1917, but denies each and every other allegation contained in paragraph marked or numbered "Eleventh" of said complaint.

7. Defendant admits that a large sum of its money was heretofore conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian or seized by him under the provisions of the Trading with the Enemy Act, as property and/or money owned or belonging to or held for, by, on account of, or in behalf of, or for the benefit of the defendant, and that the defendant on the outbreak of war became an enemy within the meaning and purview of that term as used and defined in the Trading

976 *Exhibit B of Petition for Leave to Intervene*

with the Enemy Act; but denies that it has any knowledge or information sufficient to form a belief as to each and every other allegation contained in paragraph marked or numbered "Twelfth" of said complaint.

8. Defendant denies that it has any knowledge or information sufficient to form a belief as to each and every allegation contained in paragraph marked or numbered "Thirteenth" of said complaint.

FOR A FIRST SEPARATE AND DISTINCT DEFENSE, DEFENDANT
977 ALLEGES, ON INFORMATION AND BELIEF:

1. The defendant, Zentraleinkaufsgesellschaft, hereinafter referred to as "Z. E. G.," is a corporation organized in or about the month of January, 1915, under the laws of Germany, with its principal place of business in the City of Berlin, Germany, and succeeded to and took over all of the assets and liabilities of the enterprise theretofore operated by Reichseinkauf, which was the purchasing agency of the then Imperial German Government, having its principal place of business in the City of Berlin, Germany.

978 2. That on or about the 25th day of September, 1914, one Richter, acting on behalf of the said Reichseinkauf, in Hamburg, notified one Hermann Sielcken, now deceased, then a member of the firm of Crossman & Sielcken, that the Reichseinkauf had been commissioned to receive in Baltic seaports, mixed cargoes of certain foodstuffs shipped by vessels of neutral nations from American ports to neutral ports of the Baltic sea, and that the Reichseinkauf would pay for such cargoes the value, C. I. F. Baltic seaport (*i. e.*, the value of the invoice plus freight and insurance expenses), and ten (10%) per cent, commission on this value; payment to be made on the arrival of the goods and delivery of the bills of lading at the port of destination. A copy of such notification in translation is attached hereto, marked Exhibit "A."

3. Thereafter the Z. E. G. having succeeded the Reichseinkauf, notified the said Hermann Sielcken to stop shipments of wheat and flour and asked him to request his friends to purchase other merchandise.

4. Pursuant to the aforesaid notification, the firm of Crossman & Sielcken shipped on the vessels listed below, consigned to Harry Levin or Beckmann & Jorgensen, at Copenhagen, Denmark, the following:

s/s "Hilding."	Sailed February 27, 1915
	Consigned to Harry Levin 980
s/s "Arkansas."	Sailed March 23, 1915
	Consigned to Harry Levin
s/s "Hellig Olav."	Sailed March 30, 1915
	Consigned to Harry Levin
s/s "Gunborg."	Sailed April 23, 1915
	Consigned to Harry Levin
s/s "Indianic."	Sailed April 23, 1915
	Consigned to Beckmann & Jorgensen
s/s "Oscar II."	Sailed April 28, 1915
	Consigned to Beckmann & Jorgensen.

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5. The said shipments did not arrive in any Baltic seaport, and neither the goods nor the bills of lading were delivered to the defendant at the point of destination.

FOR A SECOND SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES, ON INFORMATION AND BELIEF:

6. Defendant Z. E. G. realleges each and every allegation contained in paragraph marked and numbered 1, 2, 3, 4 and 5 of the First Separate and Distinct Defense, the same as if more specifically set forth herein.

7. That it was specifically agreed between the parties that title to and property in the said goods should at all times until actual delivery of the goods, remain in the firm of Crossman & Sielcken.

982 *Exhibit B of Petition for Leave to Intervene*

FOR A THIRD SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES, ON INFORMATION AND BELIEF:

8. Defendant realleges each and every allegation contained in paragraphs marked or numbered 1, 2, 3, 4 and 5 of the First Separate and Distinct Defense, the same as if more specifically set forth herein.

9. That the said notification, marked Exhibit "A," was given in Germany; that the German law applies, and that under the law of Germany as it existed in the
983 year 1914 and subsequently, the said notice constituted a mere offer which would be accepted and become a binding contract only by actual delivery of the goods and delivery of the bills of lading at a neutral port of the Baltic sea.

FOR A FOURTH SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES, ON INFORMATION AND BELIEF:

10. Defendant realleges each and every allegation contained in paragraph marked or numbered 1, 2, 3, 4 and 5 of the First Separate and Distinct Defense and paragraph marked or numbered 7 of the Second Separate
984 and Distinct Defense, the same as if more fully set forth herein.

11. That under the law of Germany, title to the goods and property in the goods were in the plaintiff and the risk of loss was to be borne by the plaintiff herein.

FOR A FIFTH SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES ON INFORMATION AND BELIEF:

12. Defendant realleges each and every allegation contained in paragraphs marked or numbered 1, 2, 3, 4 and 5 of the First Separate and Distinct Defense, as if more specifically set forth herein.

13. That the firm of Crossman & Sielcken was composed of John S. Sorenson, Thorleif S. B. Nielsen and

Hermann Sielcken. That at the outbreak of war between the United States and Germany, to wit, April 6th, 1917, the said Hermann Sielcken resided in Germany and became an alien enemy.

14. That the firm of Crossman & Sielcken was dissolved by the outbreak of war.

15. That thereafter and in October, 1917, pursuant to the Trading with the Enemy Act, the said firm of Crossman & Sielcken was declared an enemy firm and all of its assets were turned over to and/or were seized by the Alien Property Custodian of the United States.

16. That title to the said assets of Crossman & Sielcken was thereafter held by the Alien Property Custodian, as trustee, and that the Alien Property Custodian never returned or otherwise released said assets to the firm of Crossman & Sielcken, or to the plaintiffs as surviving partners of said firm, and the plaintiffs have no title to the alleged cause of action set forth in the complaint herein.

FOR A SIXTH SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES ON INFORMATION AND BELIEF:

17. Defendant realleges each and every allegation contained in paragraphs marked and numbered 1, 2, 3, 4 and 5 of the First Separate and Distinct Defense and paragraphs marked and numbered 13 and 14 of the Fifth Separate and Distinct Defense, as if more specifically set forth herein.

18. That in or about the month of October, 1917, said Hermann Sielcken died in Germany leaving a last will and testament dated February 18, 1917, in which he named as testamentary executors Carl Isenberg, Richard Isenberg, G. Georgius and Gustav Diederichsen.

19. That said last will and testament was duly probated in Germany, and the above-named duly qualified as executors of Hermann Sielcken and took charge of all assets of the deceased in Germany.

988 *Exhibit B of Petition for Leave to Intervene*

20. That the dissolution of the firm of Crossman & Sielcken having come about through the outbreak of war between Germany and the United States, the partner residing in Germany, to wit, Hermann Sielcken, was entitled to the possession and control of all assets of the firm then in Germany, and that the executors of said Sielcken succeeded to his rights.

21. That any claim by reason of the facts alleged in the complaint was a claim in Germany during the war, and that the plaintiffs had no interest therein, nor have
989 they since acquired any interest therein.

22. That on or about the 27th day of December, 1917, the said executors entered into an agreement with the defendant Z. E. G. to arbitrate the question of whether or not the risk of loss on the cargoes referred to in the complaint herein, as well as a cargo on the s/s "United States," rested upon the plaintiffs or the defendant Z. E. G., a copy of said contract of arbitration being attached hereto, marked Exhibit "B."

23. That said arbitration was duly proceeded with and the parties entered an appearance before the Board of Arbitration, and that said Board of Arbitration on or
990 about the 31st day of May, 1918, concluded that the risk of loss in connection with all cargoes, except those on the s/s "United States" and s/s "Hellig Olav," was on the firm of Crossman & Sielcken, and that the defendant herein was under no liability for said shipments, and as respects the cargoes on the above two vessels, the said Board of Arbitration requested further information.

FOR A SEVENTH SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES ON INFORMATION AND BELIEF:

24. Defendant realleges each and every allegation contained in paragraphs marked and numbered 1, 2, 3, 4 and 5 of the First Separate and Distinct Defense and paragraphs marked and numbered 13 and 14 of the

Fifth Separate and Distinct Defense, and paragraphs marked and numbered 18, 19, 20, 21, 22 and 23 of the Sixth Separate and Distinct Defense, as if more specifically set forth herein.

25. That thereafter and in or about July, 1928, the parties to the said arbitration settled all questions concerning the matter through an agreement pursuant to which Z. E. G. bore one-fourth of the expense of the arbitration, instead of one-thirteenth as fixed by the Board of Arbitration, and the above named executors bore three-fourths of the expense, instead of twelve-thir- 992
teenths as fixed by said Board of Arbitration; and, in addition thereto, it was agreed that Hermann Sielcken, his estate, and/or the firm of Crossman & Sielcken should retain monies theretofore paid by the Z. E. G. on account of the shipment on the s/s "United States."

26. That the said executors of the estate of Hermann Sielcken in Germany, agreed to and approved the said settlement; that said proportions of the cost of arbitration were paid as agreed, and the firm of Crossman & Sielcken and/or Hermann Sielcken, or his estate, retained and still continues to retain monies received from the shipment on the s/s "United States"; that the 993
plaintiffs herein did not promptly repudiate the settlement, nor have they ever repudiated the same, nor have either the said executors or the plaintiff ever put the parties in the same position that they would have been in had the agreement of settlement not been made.

27. That the said Hermann Sielcken owned all the assets of Crossman & Sielcken; that the estate of Hermann Sielcken succeeded to all assets thereof and the plaintiffs are estopped from making the claim set forth herein.

FOR AN EIGHTH SEPARATE AND DISTINCT DEFENSE, DEFENDANT ALLEGES ON INFORMATION AND BELIEF:

28. Defendant realleges each and every allegation contained in paragraphs marked and numbered 1, 2, 3, 4

994 *Exhibit B of Petition for Leave to Intervene*

and 5 of the First Separate and Distinct Defense, the same as if specifically set forth herein.

29. That the firm of Crossman & Sielcken had a joint account with the firm of Theodore Wille & Company, of Hamburg, Germany, in connection with the aforesaid shipments, according to the terms of which Theodore Wille & Company would have an equal interest in the said shipments with the firm of Crossman & Sielcken.

30. That Theodore Wille & Company are a necessary
995 party to this action.

FOR A NINTH SEPARATE AND PARTIAL DEFENSE, DEFENDANT ALLEGES ON INFORMATION AND BELIEF:

31. Defendant realleges each and every allegation contained in paragraphs marked and numbered 1, 2, 3, 4 and 5 of the First Separate and Distinct Defense, the same as if specifically set forth herein.

32. That the plaintiffs have been damaged if at all to the extent of only one-half the aforesaid claim.

WHEREFORE defendant Z. E. G. demands judgment that
996 the Bill of Complaint herein be dismissed, together with the costs of this action.

ARTHUR GARFIELD HAYS,
Solicitor for Defendant,
Zentraleinkaufsgesellschaft, m. b. H., (Z. E. G.),
Office & P. O. Address:
43 Exchange Place,
Borough of Manhattan,
New York City.

Exhibit B of Petition for Leave to Intervene 997

Exhibit "A."

TRANSLATION

COPY

EXHIBIT 3. GERMAN

ENCLOSURE A

AGREEMENT

Berlin, W. 8 September 25th, 1914.

I herewith conform to Your Honor, that the "Reichs- 998
einkauf" (Imperial or Government Purchase) in Hamburg has been commissioned to receive, in Baltic seaports, mixed cargoes of wheat, tea, cocoa and high concentrated animal food, which are shipped by vessels of neutral nations from American ports to neutral ports of the Baltic Sea; the value of each cargo amounting up to about 600,000 Marks. The "Reichseinkauf" will, for such cargoes, pay the value of the cargo C.I.F. Baltic seaport (*i. e.* the value of the invoice plus freight and insurance expenses) and 10% commission on this value. Payment to be made on the arrival of the goods and delivery of the bills of lading at the port of destination. 999
This also refers to whole steamer cargoes of high concentrated animal food (oil cakes, cotton seed cakes, etc.).

The confirmation can be cancelled by us at any time and expires of itself on the proclamation of peace. Cargoes, which are on their way, are in such cases to still be received, and also goods, which have been contracted for shipment, as well as goods, which have previously been purchased and ordered for the purposes of this contract.

(Signed) RICHTER

1000 *Exhibit B of Petition for Leave to Intervene*

Exhibit "B."

TRANSLATION

(Stamp) No. 198
2 M 50 PF. pr. 2 Expl.
Jan. 3, 1918
Sgd. Signature

Contract of Arbitration

1001 Between the firm of Crossman & Sielcken, New York, and the Central Purchasing Corporation, Berlin, there exist differences concerning the winding up of transactions which were carried out under an agreement between the parties arrived at in September/October, 1914. The matter has to do with shipments from New York to Copenhagen, which the firm of Crossman & Sielcken arranged for the Z.E.G. in March/April, 1915, with the steamers "United States," "Arkansas," "Hellig Olav," "Oscar II," "Indianic," "Hilding," "Gunborg." Concerning these shipments, of which the first four arrived in Copenhagen but were returned to England and the
1002 last three were seized in England, the parties are in dispute as to who shall bear the risk of the voyage and whether or not these shipments are to be paid for by the Z.E.G.

It has been agreed that these disputes shall be decided by a court of arbitration. Each party shall appoint an arbiter; Reichsgerichtsrat Dr. F. Philippi is appointed as 3. arbiter and chairman. The District Court at Hamburg shall have exclusive jurisdiction for all court actions which may become necessary.

It has been agreed that only one of the shipments captured and brought directly to England and one brought to Denmark but later returned to England, shall be submitted to the court of arbitration, with the provision that the parties will recognize the decision of the court of arbitration as binding for the other above mentioned shipments.

Exhibit B of Petition for Leave to Intervene 1003

The Z.E.G. shall be plaintiff and bring suit for the establishment of its rights. The suit shall be directed against the estate of Hermann Sielcken, represented by the executors, Messrs. G. Diederichsen, G. Georgius, Carl Isenberg and Richard Isenberg.

Berlin, December 27, 1917

CENTRAL PURCHASING CORPORATION
with limited liability
(Zentral-Einkaufsgesellschaft
mit beschrankter Haftung) 1004

Sgd. Signature

Sgd. Signature

Hamburg,
Dec. 31, 1917.

Sgd. D. A. Kaemmerer

For the executors of the

Estate of Herm. Sielcken.

The correctness of the above copy is certified. 1005

Berlin, January 16, 1928.

(Seal) Signature

Assessor.

State of New York,
County of New York, ss:
Southern District of New York,

Arthur Garfield Hays, being duly sworn, deposes and says that he is the solicitor for the defendant Zentral-einkaufsgesellschaft, m. b. H. (Z.E.G.), in the above entitled action. That he resides at 24 East 10th Street and has his office at 43 Exchange Place, in the Borough of Manhattan, City, County and State of New York. That he has read the foregoing answer and knows the

1006 *Exhibit B of Petition for Leave to Intervene*

contents thereof and that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters, he believes it to be true. That the reason why this verification is made by deponent and not by the defendant Z.E.G. is that the defendant is a foreign corporation, having its office and principal place of business in Berlin, Germany; that none of the officers of said defendant corporation is within the City, County and State of New York and the jurisdiction of this court,
1007 where deponent resides and has his office. That the source of his information and the grounds of his belief as to all matters alleged herein on information and belief are letters, papers, documents and exhibits in deponent's possession concerning the issues of this action and conferences with agents of the said defendant.

ARTHUR GARFIELD HAYS.

Sworn to before me this
6th day of August, 1929.
Albert E. Kane,
Notary Public,
New York Co. Clerk's No. 14, Reg. No. 0-54.
1008 Commission expires March 30th, 1930.

Exhibit C of Petition for Leave to Intervene. 1009

Motion to Dismiss and Answer to the Bill of Complaint of Defendants Sutherland and Alien Property Custodian and White as Treasurer.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken, Plaintiffs, against HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL-EINKAUF-GESELLSCHAFT, m. b. H., Defendants. 1010 Equity 4428.

Motion to Dismiss and Answer to the Bill of Complaint.

I.

MOTION TO DISMISS. 1011

Now come the defendants, Howard Sutherland, as Alien Property Custodian, and Frank White, as Treasurer of the United States, separately and severally moving to dismiss the bill of complaint and as grounds for their separate and several motions assign the following:

(1) It appears affirmatively from the averments of the bill of complaint that no debt is owing to the plaintiffs from any enemy whose money or other property has been conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian, and/or the Treasurer of the United States, and is now held by the Alien Property Custodian, and/or the Treasurer of the United States.

(2) It appears affirmatively from the averments of the bill of complaint that no debt is owing to the plaintiffs by the Zentral Einkaufsgesellschaft, m. b. H.

1012 *Exhibit C of Petition for leave to Intervene*

(3) Plaintiffs have not stated facts sufficient to entitle them to equitable relief under the provisions of the Trading with the Enemy Act.

II.

ANSWER.

And now not waiving the many defects and insufficiencies of the bill of complaint, but insisting upon each and all of the objections thereto hereinbefore set forth,
1013 these defendants for their separate and several answer to the bill of complaint separately and severally say:

(1-2) That they are without knowledge as to the averments of the paragraphs numbered First and Second of the bill of complaint, and therefore demand strict proof thereof.

(3-4) They admit the averments of paragraphs numbered Third and Fourth of the bill of complaint.

(5) Answering the averments of paragraph numbered Fifth of the bill of complaint these defendants say, upon information and belief, that the Zentral Einkaufsgesell-
1014 schaft, m. b. H., is a Society organized under the laws of Germany providing for the organization of such Societies. Upon information and belief these defendants say that while such organizations are not known as corporations in Germany they possess many attributes similar to the attributes possessed by corporations in the United States.

Further answering said paragraph these defendants, upon information and belief, admit that the said Society was organized in or about the month of January, 1915, with its principal place of business at Berlin, Germany.

Further answering said paragraph these defendants say that they are without knowledge with respect to the other separate and several allegations thereof, and therefore demand strict proof thereof.

(6) The averments of paragraph numbered Sixth of the bill of complaint are statements of law which these defendants are not required to answer.

(7-8-9-10-11) They are without knowledge as to the averments of paragraphs numbered Seventh, Eighth, Ninth, Tenth and Eleventh of the bill of complaint, and therefore demand strict proof thereof.

(12) Answering the averments of paragraph numbered Twelfth of the bill of complaint these defendants say that the Alien Property Custodian, after investigation determined, that the Zentral Einkaufsgesellschaft, m. b. 1016
H., was an enemy, and that certain money and other property was held for, by, on account of, and for the benefit of the said enemy. Thereupon the Alien Property Custodian required the said money and other property to be conveyed, transferred, assigned, delivered and/or paid to him. The requirements of the Alien Property Custodian were fulfilled and he received a large amount of money and other property. The said money was paid into the Treasury of the United States pursuant to the provisions of Section 12 of the Trading with the Enemy Act, and there is now in the Treasury of the United States a sum considerably in excess of the 1017
amount claimed by the plaintiffs in this suit.

Further answering said paragraph these defendants say that they are without knowledge with respect to the other separate and several allegations thereof, and therefore demand strict proof thereof.

(13) Answering the averments of paragraph numbered Thirteenth of the bill of complaint these defendants admit that the plaintiffs duly filed with the Alien Property Custodian a notice of their claim under oath and in the form and containing the particulars required by the Custodian, and that no application has been made for the allowance of the said claim and said claim has not been allowed.

1018 *Exhibit C of Petition for leave to Intervene*

FOR THEIR FURTHER SEPARATE AND SEVERAL DEFENSES THESE DEFENDANTS SEPARATELY AND SEVERALLY SAY:

(14) On or about the 19th day of June, 1924, there was entered in the Supreme Court of the District of Columbia a final decree in a suit instituted by the Securities Corporation General against Howard Sutherland, as Alien Property Custodian, and Frank White, as Treasurer of the United States, in equity 41153, wherein the defendant, the Treasurer of the United States, was re-
1019 quired to pay to the plaintiff the sum of $250,000, with interest at the rate of six per centum per annum from July 14, 1919, until paid. Thereafter the Treasurer of the United States in satisfaction of said decree paid to the plaintiff in the said suit, the Securities Corporation General, certain sums of money but has not completely satisfied the said decree because it is insisted by the defendant, the Treasurer of the United States, that he is not in possession of any funds belonging to the Imperial German Government out of whose funds the amount of said judgment was directed to be paid.

(15) On or about the 21st day of December, 1927, the said Securities Corporation General filed in the said suit
1020 in the Supreme Court of the District of Columbia, its second supplemental bill of complaint, wherein it alleged that the money held by the Treasurer of the United States as the property of the Zentral Einkaufsgesellschaft, m. b. H., had, by reason of certain facts set forth in the said second supplemental bill of complaint, become the money and other property of the Imperial German Government, and was subject to the payment of the amount of said decree in favor of the Securities Corporation General remaining unpaid. In said second supplemental bill of complaint the said Securities Corporation General prays that the Court direct the Treasurer of the United States and the Alien Property Custodian to transfer to a trust known as Trust 555 to the credit of the Imperial German Government, the money and other property held by the Alien Property Custodian and the Treas-

urer of the United States to the credit of the Zentral Einkaufsgesellschaft, m. b. H. A copy of said second supplemental bill of complaint is attached hereto as Exhibit A, incorporated herein, and made a part hereof, for the purpose of advising the Court as to the claim of the plaintiffs therein. By pleading the facts concerning the suit in the Supreme Court of the District of Columbia, these defendants do not admit any of the facts alleged therein nor concede that the plaintiff is entitled to the relief prayed for.

(16) Upon information and belief these defendants 1022
say that in the event, Securities Corporation General, plaintiff in the said suit now pending in the Supreme Court of the District of Columbia, secures the relief for which it prays in its second supplemental bill of complaint, all of said money now held by the Alien Property Custodian in the name of the Zentral Einkaufsgellschaft, m. b. H., will become subject to numerous decrees which have been entered in the Supreme Court of the District of Columbia and in the District Court of the United States for the Eastern District of Missouri, which in the aggregate provided for the payment by the defendant, the Treasurer of the United States of money in an amount in excess of the money now held by these defend- 1023
ants in the name of Zentral Einkaufsgesellschaft, m. b. H., and which is the same money out of which the plaintiffs in this case are seeking to recover.

Wherefore having fully answered the bill of complaint, these defendants pray that they may be dismissed with their costs in this behalf expended, and for such other and further relief to which in the premises they may be entitled.

CHARLES H. TUTTLE,
United States Attorney,
Solicitor for Howard Sutherland, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

1024 **Exhibit A of Answer of Treasurer and Alien Property Custodian.**

(This exhibit to the answer of the Treasurer and Alien Property Custodian was not annexed to the petition for leave to intervene but was submitted on the hearing of the principal motion.)

IN THE

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

1025

SECURITIES CORPORATION GENERAL, Complainant, vs. HOWARD SUTHERLAND, as Alien Property Custodian, and FRANK WHITE as Treasurer of the United States, Defendants.	Equity No. 41153.

Second Supplemental Bill of Complaint.

To the Supreme Court of the District of Columbia:

1026 Securities Corporation General, a corporation, complainant herein, files herein this, its second supplemental bill of complaint, and respectfully shows as follows:

1. That it is a corporation organized under the laws of the State of Virginia and having its principal office in the City of Philadelphia, Pennsylvania, and that it brought the original suit and is now filing this second supplemental bill under the provisions of Section 9 of the Act of Congress, approved October 6, 1917, as amended, and commonly known as the Trading with the Enemy Act.

2. That the defendants, Howard Sutherland and Frank White, are citizens of the United States and are sued as Alien Property Custodian and Treasurer of the United States, respectively.

Exhibit A of Answer of Treasurer and Alien Property Custodian 1027

3. That the purpose of this supplemental bill is to obtain from this honorable Court orders and/or decrees directing and requiring the defendants to fully satisfy the final decree heretofore entered in this cause, out of property and/or money seized by the Alien Property Custodian and owing or belonging to, or held by, for, on account of or on behalf of, or for the benefit of the Imperial German Government or its successor Government, the Republic of Germany, and now held by the defendants.

4. That complainant is a person, not an enemy or ally 1028
of an enemy, within the meaning of Section 9 of the Trading with the Enemy Act, approved October 6, 1917, as amended.

5. That on October 6, 1917, the date of the approval of said Trading with the Enemy Act, the Imperial German Government was an enemy within the meaning of said Act and continued to be an enemy until it ceased to exist as a Government.

6. That in the proceedings heretofore had herein on June 19, 1924, a final decree was entered which, among other things, required the defendant, Frank White, as Treasurer of the United States, upon presentation and 1029
surrender of certain Treasury notes of the Imperial German Government, as set forth therein, to forthwith pay and deliver complainant the sum of Two Hundred and Fifty Thousand Dollars ($250,000) with interest at the rate of six per centum (6%) per annum from July 14, 1919, until paid.

7. That on January 14, 1926, and pursuant to the decree above referred to, complainant received from the Treasurer of the United States in partial satisfaction of said decree the face amount of said notes amounting to Two Hundred and Fifty Thousand Dollars ($250,000) and the sum of Twenty-Four Thousand One Hundred and Seventy-Six Dollars and Seven Cents ($24,176.07) on account of interest at the rate of six per cent (6%) and

1030 *Exhibit A of Answer of Treasurer and Alien Property Custodian*

on the 29th day of March, 1926, the further sum of Four Thousand Two Hundred Seventy-eight Dollars and Seventy-nine Cents ($4,278.79) on account of interest at the rate of six per cent (6%) due on said notes from July 14, 1919, to January 14, 1926, leaving due and unpaid on account of interest accrued during said period the sum of Sixty-nine Thousand and Forty-five Dollars and Fourteen Cents ($69,045.14) which said sum has not been paid, nor any part thereof, and
1031 there is now due and owing, and the Treasurer of the United States and/or The Alien Property Custodian should pay to the complainant said sum of Sixty-nine Thousand Forty-five Dollars and Fourteen Cents ($69,045.14) as provided in said final decree.

8. That the Treasurer of the United States claims to have exhausted the funds in his hands standing to the credit of the Imperial German Government, and the Alien Property Custodian claims that he holds no other property and/or money which is owing or belonging to, or held for, by, on account of or on behalf of, or for the benefit of the Imperial German Government or for its successor Government, the Republic of Germany, and both
1032 of said defendants have declined and refuse to pay the balance due complainant as provided in said final decree.

9. That notwithstanding said refusal, complainant alleges and avers on information and belief that said defendants now hold property and/or money in excess of Seven Hundred Thousand Dollars ($700,000), which is owed or belongs to, or is held for, by, on account of or on behalf of, or for the benefit of the Imperial German Government or its successor Government, the Republic of Germany, which said property and/or money ought, in law and in equity, to be credited to said Imperial German Government upon the books of said Treasurer and the Custodian and applied to the further satisfaction of Complainant's judgment.

Exhibit A of Answer of Treasurer and Alien Property Custodian 1033

10. That said property and/or money in excess of Seven Hundred Thousand Dollars ($700,000) is held to the credit of trust No. 592 in the name of "Zentral Einkaufs Gesellschaft."

11. That the Zentral Einkaufs Gesellschaft was a corporation organized in 1914 under the laws of Germany.

12. That the original capital of said corporation was principally subscribed for by the Imperial German Government, the German States and Free Cities of Hamburg, Bremen and Lubeck, and a small percentage thereof by 1034 private individuals, firms and corporations, all of whom were German Nationals.

13. That said corporation was organized under Governmental direction; that it was a Governmental agency and that the representative of said corporation in the United States was H. F. Albert, Commercial Attache of the Imperial German Government; that said corporation during the period of the world war acted as a purchasing agent for the Imperial German Government.

14. That said corporation was organized during the war in 1914 for Governmental purposes and to centralize 1035 the purchase abroad of goods, particularly foodstuffs and raw materials, to be used in Germany during the world war; that the corporation occupied a special status and was in every sense a governmental agency, and was operated under a governmental supervision, and in many cases was excepted or exempted in war legislation from rules and regulations applying to and regulating ordinary business corporations; that with respect to some commodities, the corporation enjoyed a governmental monoply, as for instance, the importation of rice, sugar, meat, fish and eggs.

15. That the greater part of the business of said corporation in the United States was conducted through the office of H. F. Albert, which was designed as a Commercial Office of the German Embassy; that when sup-

plies and raw materials purchased by the corporation arrived in Germany, they were distributed under Governmental supervision and regulation; that said corporation transacted no business other than for the benefit of the Imperial German Government or its people in the supply of goods as heretofore stated; that it was not conducted for profit and was intended to be, and was, mainly a German Governmental agency and handled its business for the German Government and its people.

1037 16. That in addition to the corporation's original capitalization, purchases made through it were financed by the Imperial German Government, and, in some instances, by the German State Governments and funds furnished it with which to buy supplies and raw materials.

17. That the notes of the Imperial German Government referred to in complainant's original bill, and for the payment of which with interest judgment was secured, were payable in dollars and were known as Series No. 26; that a large percentage of the proceeds of said series of notes sold in the United States in 1916 to citizens thereof, were turned over by the German Embassy and
1038 placed to the credit of the Zentral Einkaufs Gesellschaft and used by it in the purchase of supplies and raw materials for the Imperial German Government; that by reason thereof, said corporation became indebted to the German Government to the extent of the amounts advanced by it.

18. That the German Government originally subscribed for and has continuously owned shares of said corporation of a par value of 29,950,000 marks, and the several German States originally subscribed for shares having a par value of 13,800,000 marks, all of which, except shares having a par value of 100,000 marks, were acquired by the German Government; that the present German Government now owns all of the outstanding capital shares of said corporation, the amount authorized and outstanding being 45,000,000 paper marks, ex-

cept shares of the par value of 100,000 paper marks owned by the Free State of Oldenburg and shares having a par value of 250,000 paper marks, held and owned by German private industrial concerns; that the percentage of said shares now held and owned by the German Government is 99.3% of the total shares issued and outstanding.

19. That said corporation, acting through its duly authorized officers, executed in writing and filed with the Alien Property Custodian its consent to the use of the 1040
property or money in said Trust No. 592 for the payment of complainant's judgment and judgments obtained by other American note-holders similarly situated and authorized the Alien Property Custodian to make such payment.

20. That the German Government, acting through the Reichminister der Finanzen, who had full authority under the law of Germany, executed and filed with the Alien Property Custodian its consent to the use of any funds of the Zentral Einkaufs Gesellschaft in which it had any interest or which was due and owing to it by said corporation, in the payment of complainant's judgment 1041
and of judgments obtained by other American noteholders similarly situated.

21. That no claim has been filed with the Alien Property Custodian against said corporation; that there are no suits pending against the said corporation in the United States; that no judgments by American citizens or neutrals or by anyone else have been secured against it in the United States and that the corporation owes no debts in the United States.

22. That all of the debts of said corporation have been paid except the indebtedness due by it to the German Government and all claims settled except one which was then in litigation in Germany.

23. That up to October 31, 1926, said corporation was

1042 *Exhibit A of Answer of Treasurer and Alien Property Custodian*

in the hands of a liquidator, duly appointed and qualified under German law and the business and affairs of said corporation were until then in liquidation in accordance with German law and said corporation was not actively engaged in business.

24. That since October 31, 1926, and, pursuant to the provisions and requirements of the German law of July 15, 1921, the German Government has, by declaration, and pursuant to due forms of German law, declared
1043 that, as of October 31, 1926, the Zentral Einkaufs Gesellschaft was taken over by the Reich, or German Government, together with its assets and liabilities; and said declaration, as required by German law, was published in the German Official Law Record, known as the Reichsanseiger, of November 1, 1926, and, thereafter, proper entries, as required by German law, were made upon the Commercial Corporation Register of the City of Berlin, noting the fact that the Zentral Einkaufs Gesellschaft as a corporation, was dissolved and extinguished according to paragraphs 7 and 10 of the Law of July 15, 1921, German Law Record, page 942.

1044 25. That the effect of the action of the German Government, as set forth in the preceding paragraph, was to completely dissolve and extinguish the said Zentral Einkaufs Gesellschaft, and destroy and put an end to its corporate entity, and to vest the legal title to all of the assets and liabilities of said Zentral Einkaufs Gesellschaft in the German Government.

26. That notwithstanding the dissolution and extinguishment of the said Zentral Einkaufs Gesellschaft and the taking over of its assets and liabilities by the German Government, as set forth herein, the defendants have declined and refused and still decline and refuse, to use or permit to be used, for the further satisfaction of complainant's judgment and similar judgments of other American citizens, the property and/or money held to

 1045

the credit of Trust No. 592 in the name of "Zentral Einkaufs Gesellschaft" and said defendants continue to insist that they have exhausted the funds in their hands belonging to the Imperial German Government and claim that they hold no other property and/or money which, under Section 9 of the Trading with the Enemy Act as amended, can be applied to the further satisfaction of complainant's said decree of June 19, 1924.

Wherefore, your complainant prays:

1. That said Howard Sutherland, as Alien Property Custodian, and said Frank White, as Treasurer of the United States, be made parties defendant to this supplemental bill and required to answer the same, but not under oath, answer under oath being hereby expressly waived. 1046

2. That the defendants, as Treasurer of the United States and as Alien Property Custodian, be ordered, directed and required by mandatory injunction or otherwise, to transfer to Trust No. 555 and to the credit of the Imperial German Government, the property and/or money now held by the Custodian and Treasurer in Trust No. 592 to the credit of the Zentral Einkaufs Gesellschaft and to use said property and/or money for the satisfaction of the decree heretofore entered in favor of the complainant. 1047

3. That this Court order and decree that complainant is entitled to be paid the balance due on its decree in this cause from the property and/or money held in Trust No. 592 in the name of Zentral Einkaufs Gesellschaft.

4. That said Court enter such further orders and decrees and grant such other writs and remedies as may be necessary or proper to enforce and carry into effect the final decree heretofore entered in this cause to the end that complainant may be paid in full the amount heretofore adjudged by this Court to be due it.

1048 *Exhibit A of Answer of Treasurer and Alien Property Custodian*

5. That due process may be issued and the complainant may be granted such other, further and general relief in the premises as the nature of its case may require, or to equity may seem meet and complainant will ever pray.

SECURITIES CORPORATION GENERAL,
By CARLIN, CARLIN & HALL,
Its Attorneys,
Munsey Building,
1049 Washington, D. C.

Of Counsel:
NORDYCE, HALLIDAY & WHITE,
McKENNEY & FLANNERY.

District of Columbia, ss:

I, M. Carter Hall, being first duly sworn on oath, depose and say that I have read the foregoing supplemental bill by me subscribed as attorney for the Securities Corporation General, all of the officers of which said corporation are absent from the District of Columbia and that I know the contents thereof; that
1050 the facts therein stated on my own personal knowledge are true; that those stated on information and belief, I believe to be true.

M. CARTER HALL.

Subscribed and sworn to before me
this 12th day of December, 1927.
My commission expires December 26, 1927.
Katherine E. Merkling,
Notary Public.
(Seal.)

Exhibit D of Petition for Leave to Intervene. 1051

Final Decree.

At a Term of the United States District Court for the Southern District of New York, held at the Federal Building, Borough of Manhattan, City of New York, on the 30th day of December, 1929.

Present: Hon. Francis G. Caffey,
United States District Judge.

1052

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken, Plaintiffs, against HOWARD SUTHERLAND as Alien Property Custodian, WALTER O. WOODS as Treasurer of the United States, and ZENTRAL-EINKAUF-GESELLSCHAFT, m. b. H., Defendants.	Final Decree. Equity No. E44-28.

1053

This cause came on to be heard at this term upon the bill of complaint, the answers of the defendants, the stipulations of the parties and after hearing the testimony presented by the parties, and arguments of counsel, and upon due considerations thereof, it is by the Court this the 30th day of December, 1929,

Adjudged, Ordered and Decreed as follows:

1. That Walter O. Woods, as Treasurer of the United States be substituted as a party defendant herein in place and stead of the defendant, Frank White, as Treasurer of the United States.

2. That the defendant, Zentral-Einkaufsgesellschaft, m. b. H., is indebted to the plaintiffs in the sum of $380,761.54, with interest at the rate of 6% per annum to the date of this decree on $84,472.08 thereof from

1054 *Exhibit D of Petition for Leave to Intervene*

April 17, 1915, amounting to $74,512.82; on $105,136.12 thereof from March 19, 1915, amounting to $93,245.22; on $83,938.02 thereof from May 11, 1915, amounting to $73,462.56; on $48,396.88 thereof from May 3, 1915, amounting to $42,565.05; on $58,818.44 thereof from May 13, 1915, amounting to $51,613.18, making a total of $716,160.37, no part of which has been paid.

3. That the defendants, Howard Sutherland, as Alien Property Custodian and/or Walter O. Woods, as Treasurer of the United States, pay, convey, transfer, assign
1055 and deliver unto the plaintiffs herein out of the money and/or other property seized by the Alien Property Custodian in the name of the Zentral-Einkaufsgesellschaft, m. b. H., and now held by said Alien Property Custodian and/or said Treasurer of the United States, the sum of $716,160.37, with interest at the rate of 6% thereon from the date of this decree to the date of payment to the plaintiffs.

FRANCIS G. CAFFEY,
United States District Judge.

Filed January 2, 1930.

1056

Exhibit E of Petition for Leave to Intervene. 1057

Letter From Executor to Sorenson and Nielsen of June 14, 1918.

2281

June 14, 1918

John S. Sorenson,
Thorlief S. B. Nielsen, Esqs.,
New York City.

1058

Dear Sirs:

This company, as Executor of the will of Hermann Sielcken, requests you, as surviving partners of the firm of Crossman & Sielcken, to continue such litigation as has been heretofore instituted, and to institute such litigation as may be necessary or advisable for the collection of the obligations due the firm of Crossman & Sielcken, in your names as surviving partners, and it is agreed that your action taken in response to this request shall in no way prejudice any claim on your part as to the nature or extent of your rights as to the division of profits or otherwise upon the termination of the partnership. 1059

Very truly yours,

COLUMBIA TRUST COMPANY, Executor
of the estate of Hermann Sielcken
By W
Vice-President.

gew.dw

Exhibit F of Petition for Leave to Intervene.

This is a duplicate copy of Exhibit H of the Affidavit of Vincent L. Banker, which Exhibit is printed above at pages 292 to 294.

1060 **Exhibit G of Petition for Leave to Intervene.**

ALIEN PROPERTY CUSTODIAN

SIXTEENTH AND P STREETS, NW

Washington, D. C.

New York, January 14, 1918.

Crossman & Sielcken.

Mr. G. E. Warren, V. P.,
1061 Columbia Trust Co.,
60 Broadway, N. Y. C.

Dear Sirs:

I acknowledge receipt of a certificate evidencing your appointment as temporary administrator of the Estate of Hermann Sielcken.

Under date of November 31, 1917, you were appointed my Agent for the purpose of supervising the liquidation of the interest of Hermann Sielcken in the firm of Crossman & Sielcken under license ET-344, issued by the War Trade Board.

In view of the death of Mr. Sielcken, and your ap-
1062 pointment as temporary administrator and nomination as executor of his will, you are hereby authorized as such temporary administrator, and executor when letters are issued to you, to take possession of all the assets of the late Hermann Sielcken as of October 8, 1917, the date of his death and to account for them thereafter in due course of administration. In liquidating the interest of the late Hermann Sielcken in the firm of Crossman & Sielcken you will, of course, pay the necessary expenses incident thereto and the debts owing by the firm, the estate being the sole owner thereof.

It will, however, be necessary for you to obtain a license from the War Trade Board authorizing you to take over and manage the estate of said Sielcken as such administrator and executor.

Exhibit G of Petition for Leave to Intervene 1063

A statement of the assets and liabilities of the firm of Crossman & Sielcken as of September 30, 1917, was prepared by Arthur Young & Co. under the direction of this Department which statement, for the purposes of liquidation, is satisfactory to this Department. This statement is to be continued down to October 8, 1917, the date of Mr. Sielcken's death, for the purpose of establishing the value of the estate taken over by you.

The settlement made with the surviving partners, whose interest terminated upon the dissolution of the firm, is approved. 1064

Yours very truly,

(Signed) J. A. BOWER, Mgr.
Genl. Business Dept.

1065

1066 **Affidavit of Selden Bacon, Verified June 16, 1938.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs,
against
HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and
1067 ZENTRAL EINKAUFS-GESELLSCHAFT m. b. H.,
Defendants.

In proceedings to vacate final decree of December 30, 1929.

Equity No. 44-28.

State of New York,
County of New York, ss:

Selden Bacon, being duly sworn, deposes and says:

That he has for more than six years last past been
1068 one of counsel for the Irving Trust Company as Executor of Hermann Sielcken, deceased, in the course of which deponent has represented the said executor in numerous prolonged litigations, among others the action brought in the Supreme Court for New York County by the Chase National Bank as Ancillary Executor of Thorleif S. B. Nielsen, deceased, against John S. Sorenson, the said Irving Trust Company as executor of said Sielcken, and others; also elaborate proceedings before the Surrogate on an application of the residuary legatee of the estate of said Sielcken to vacate certain decrees approving its accountings, and other proceedings, all of which have involved very extensive study of transactions of the estate and of the firm of Crossman & Sielcken and of the activities of the Alien Property Custodian in connection with the firm of Crossman & Sielcken and the interest of Clara Sielcken, widow of decedent, in his estate.

The matters presented are of extraordinary complexity. The Attorney General in support of his motion has presented about 240 pages of affidavits and exhibits and in many important respects the affidavit presented is quite inaccurate and gives an entirely erroneous view of the facts involved in the motion; that in order to clear up these errors it will probably be necessary to present almost equally extensive papers to correct in a conclusive manner the errors in the moving papers. The selection of the necessary documents, procuring copies thereof, and preparation of affidavits of 1070
persons personally familiar with the facts will involve a great deal of labor and time and, in deponent's opinion, at least twenty days will be needed to prepare such papers properly.

Deponent further says that he has been a member of the bar, first of Minnesota and later of New York, for over fifty years, and has had considerable familiarity with proceedings before the Alien Property Custodian; that he personally examined all the records he could find in the office of the Alien Property Custodian relating to this matter and has personally assisted in the examination of witnesses connected with the War Trade Board and its predecessor, and that in deponent's opin- 1071
ion the Irving Trust Company as such executor of Hermann Sielcken, deceased, has a complete answer and defense to the motion of the Attorney General to vacate the said decree of December 30, 1929.

Deponent further says that he is informed and believes that the motion to vacate the said decree of December 30, 1929, now stands marked to be brought on, on the 21st day of June, 1938.

SELDEN BACON.

Sworn to before me this
16th day of June, 1938.
M. Paul,
Notary Public, Kings Co.
Kings Co. Clk. No. 5, Reg. No. 108.
Certificate filed in
N. Y. Co. Clk. No. 42, Reg. No. 0-P-29.
Queens Co. Clk. No. 331, Reg. No. 1962.
Bronx Co. Clk. No. 8, Reg. No. 49-P-40.
Westchester Co. Suffolk Co. Nassau Co. 1-P-40.
Commission expires March 30, 1940.
(Seal.)

1072 **Order of June 28, 1938, Permitting Intervention of Irving Trust Company as Executor.**

At a Stated Term of the United States District Court for the Southern District of New York held in the U. S. Court house in the City, County and Southern District of New York on the 28th day of June, 1938.

Present: Hon. George Murray Hulbert,
District Judge.

1073 JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs,
against
HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL EINKAUFS-GESELLSCHAFT m. b. H.,
Defendants.

Equity No. 44-28.

In proceedings to vacate final decree of December 30, 1929.

1074

Order permitting intervention of Irving Trust Company as Executor.

The above entitled matter came on to be heard upon an order to show cause why the Irving Trust Company as Executor of Hermann Sielcken, deceased, should not be permitted to intervene in this proceeding to vacate the decree of December 30, 1929, mentioned in its petition and oppose and answer the proceeding of the Attorney General of the United States as successor to the Alien Property Custodian to vacate the said decree of December 30, 1929, and why the Attorney General of the United States as successor to the Alien Property Custodian should not be required to serve a copy of his notice of such motion to vacate the said decree and the papers thereto annexed on the solicitors appearing for the said Irving Trust Company as such executor of

Order of June 28, 1938, Permitting Intervention of Irving Trust Company as Executor 1075

Hermann Sielcken, deceased, within a time to be fixed by this Court and why the said Irving Trust Company as such executor should not have thirty days in which to answer such motion papers and why the hearing of such motion to vacate said decree and any action upon such motion should not be stayed until the said Irving Trust Company should have such opportunity to serve its answering papers on said motion, and then be brought on for hearing on not less than two days' notice of the time and place for such hearing; Selden Bacon, Esq., and 1076
Leonard B. Smith, Esq., appearing as solicitors for and in behalf of the Irving Trust Company as such executor of Hermann Sielcken, deceased, and Lamar Hardy, United States Attorney (by Francis J. McNamara, Special Assistant to the United States Attorney General, of counsel), appearing on behalf of the Attorney General of the United States,

Now, upon the said order to show cause of June 16, 1938, and the admission of service thereof thereon endorsed, and on the petition of the Irving Trust Company as executor of the last will and testament of Hermann Sielcken, deceased, verified the 16th day of June, 1938, and the exhibits thereto annexed and the 1077
affidavit of Selden Bacon verified the 16th day of June, 1938, all of which are annexed to said order to show cause, and upon the notice of motion by the Attorney General of the United States as successor to the Alien Property Custodian, dated the 18th day of May, 1938, to vacate the final decree of this court of December 30, 1929, entered in the suit brought in this Court by John S. Sorenson and Thorleif S. B. Nielsen as surviving liquidating partners of the firm of Crossman & Sielcken, Plaintiffs, against Howard Sutherland as Alien Property Custodian and others, Defendants, and the affidavit of Frank C. Sterck, attorney, Department of Justice, verified the 18th day of May, 1938, and exhibits annexed to said affidavit, and after hearing the parties, and due consideration having been had, and on motion of the Irving Trust Company as such executor of Hermann Sielcken, deceased, it is hereby

1078 *Order of June 28, 1938, Permitting Intervention of Irving Trust Company as Executor*

Ordered that said Irving Trust Company as Executor of Hermann Sielcken, deceased, is hereby permitted to intervene in this proceeding to vacate said decree without prejudice to its defending against such application by reason of its intervention instead of having been originally cited upon such motion, as prayed in its said petition, and to oppose and answer such proceedings to vacate such decree of December 30, 1929.

It is further,

1079 Ordered that the Attorney General of the United States as successor to the Alien Property Custodian or his attorneys are hereby required to serve a copy of his notice of such motion to vacate the said decree and of the papers annexed to such notice on the solicitors so appearing for said Irving Trust Company as such executor of Hermann Sielcken, deceased, within five days after notice of the entry of this order.

And it is further,

Ordered that the said Irving Trust Company as such executor shall have thirty days in which to answer such motion papers after the service thereof upon its said solicitors, and that the Attorney General have thirty

1080 days in which to reply thereto.

And it is further,

Ordered that the hearing of the said motion to vacate said decree shall then be brought on for hearing on not less than five days notice of the time and place of such hearing to be given by any of the parties to such application to vacate said decree.

HULBERT,
U. S. D. J.

Foregoing form of order approved.

LEONARD B. SMITH and
SELDEN BACON,
Attys. for Irving Trust Co.
as Executor.
Atty. for Atty. General,
LAMAR HARDY by
DAVID W. WAIRHOUSE.

ANSWERING AFFIDAVITS SUBMITTED BY IRVING TRUST COMPANY. 1081

Answering Affidavit of Brainard Avery.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs, 1082

against

HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL EINKAUFS-GESELLSCHAFT m. b. H.,
Defendants.

In proceedings to vacate final decree of December 30, 1929.

Equity No. 44-28.

State of New York, 1083
County of New York, ss:

Brainard Avery, being duly sworn, deposes and says:

That he is a member of the bar of the State of New York and has been since 1899, and that he has been a member of the bar of the Supreme Court of the United States since 1900.

Deponent further says that his first connection with the matters involved in this suit occurred in March, 1927, at which time Mr. Alexander Wendroth Sielcken talked with deponent about the situation which he understood existed. At or about that time Mr. Sielcken explained to me that he believed that there were papers in the private files of the late Mr. Hermann Sielcken in Baden-Baden which he believed would show that the German Government, directly or indirectly, was the real purchaser of the cargoes that were consigned to Levin and Beckmann & Jorgensen, which were seized by the British Government and involved in this suit, and wanted to know if

there was not some way in which recovery could be had therefor.

Mr. Alex. Sielcken also at about that time took up with me the matter of possible claim against the firm of Theodor Wille and Germany for their withholding a large amount of bonds and Marks from the Sielcken estate pursuant to restrictive German legislation.

Mr. Alex Sielcken at that time told me of the establishment in 1921 by decree of the California Courts of the record of naturalization of the late Hermann Sielcken in
1085 California, and of his death in 1917, and of his mother's subsequent marriage to Schwarz, a Latvian, about 1921, and her still later naturalization as an American citizen.

He also told me sometime in March, 1927, that the executor believed the American estate had been fully administered and had rendered a voluntary final account which he showed me, and made distribution in accordance therewith to Mrs. Sielcken.

I then suggested to Mr. Sielcken that it looked to me as if claims could be made out before the Mixed Claims Commission, but that I would like to look into the matter first; that I was going to Washington shortly and would look over things there and talk with him further.

1086 I was in Washington on March 31st, 1927, and there saw Mr. H. H. Martin, the counsel to the American Agent (Mr. Bonynge) before the Mixed Claims Commission—United States and Germany, and talked over with him then the general features of the claims in question.

A little later I learned from Mr. Martin that while the executor had instructed him in 1924 to withdraw the 1922 Memorials against Wille, the State Department had not given *formal* notice of the withdrawal to the German Government, and in strict technicality the claims had not been formally withdrawn.

About the 7th to the 10th day of May, 1927, I went with Mr. Alexander Sielcken to see Mr. Orrin R. Judd (who was then a vice president of the Irving Trust Company), and asked him, at Mr. Sielcken's suggestion, if the executor would be willing to have Mrs. Sielcken present and prosecute such claims (without going into any

detail about them), at her own expense and cost and in such manner and names as she saw fit, she employing and paying the attorneys and counsel in the matter.

Mr. Judd said that before giving any definite answer he would like to talk the matter over with Mr. George E. Warren, who was then a vice president of the Chase Bank, but who had formerly been a vice president of the Irving Trust Company in charge of this estate.

Two or three days later, Mr. Judd told me that such an arrangement would be satisfactory to the Executor, and my firm, Barnes, Avery & Whiting, was then retained 1088
by Mrs. Sielcken Schwarz for the purpose of conducting these matters, by an arrangement, the terms of which are set forth in Exhibit A hereto annexed.

We promptly retained Messrs. Charles D. Hamel and Richard S. Doyle, of the Washington, District of Columbia, bar, to assist us in the presentation of these claims.

In the summer of 1927 I learned that a large sum, amounting to nearly $900,000, had been seized by the Alien Property Custodian and had been held under that seizure as the property of Unknown Enemy No. 1; and that in 1927 the Alien Property Custodian had recently discovered that Unknown Enemy No. 1 was the Zentral 1089
Einkaufsgesellschaft (hereinafter referred to as Z. E. G.), the successor to Reichseinkauf.

It seemed to us all that besides filing the proposed Memorial against Germany and the Z. E. G. it would be wise to commence at the same time a suit in the Federal Courts to recover the price of the seized cargoes from the Z. E. G. and have it paid out of this fund. We believed that the two proceedings, one before the Mixed Claims Commission and the other a suit in the Federal Court could properly proceed side by side, both because of the essential differences between the two tribunals and also because of the differences in parties and in the relief sought in the two proceedings.

In May, 1927, I sent my junior partner, Mr. George O. Castell, to Germany to locate all possible documents and information relating to the claims we had so undertaken

to present. Mr. Castell found in the files of the late Hermann Sielcken at Baden-Baden and Hamburg the key documents on which were based the claim that the Reichseinkauf (of which Z. E. G. was the successor) was the real purchaser of the cargoes involved in this suit, and that Z. E. G. had assumed the liabilities of the Reichseinkauf. Mr. Castell shortly thereafter reported from Hamburg to me in New York that he had found these papers in Baden-Baden but that on going to Hamburg he had also found papers showing that the German executors of
1091 Sielcken had attempted to have an arbitration with Z. E. G. of the claims for the price of the cargoes; that he had in Hamburg obtained access to the files of the late Dr. Kaemmerer, who had acted for the German executors in that matter, and from those files it appeared that, although the arbitration was never completed, a settlement had been agreed upon between Z. E. G. and the German executors of Hermann Sielcken, deceased, of the matters involved in the incomplete arbitration, by which the four German executors of Hermann Sielcken (while disclosing that they could not speak for or bind the firm of Crossman & Sielcken), had signed a paper undertaking that the estate of Herman Sielcken, of
1092 which they were the German Executors, would indemnify and hold Z. E. G. harmless if the firm of Crossman & Sielcken ever made any recovery from Z. E. G. on the firm's claim against Z. E. G. for the cargoes, which was the basis of this suit.

We were, of course, disturbed at the news of the existence of any such indemnity agreement, inasmuch as Mrs. Sielcken was the residuary legatee not only of the American Estate of Mr. Sielcken, but also of all his estate in Germany, which, according to our information, was far more than sufficient to answer to any such claim for indemnity; and any claim on that indemnity agreement would naturally be asserted by Z. E. G. in Germany against the German Executors of Sielcken by suit there; and in response to that communication from Mr. Castell, I went abroad in August, 1927, to Hamburg, and there

I had interviews with Mr. Castell and with Mr. Carl Isenberg, who was not only a brother of Mrs. Sielcken but the active surviving German executor of the will of Hermann Sielcken in Germany, Messrs. Georgius and Gustav Diederichsen having both died before my arrival there, and Richard Isenberg, having for years stood aloof as far as possible from the administration of the Sielcken estate.

Mr. Carl Isenberg assured me that there had been a complete and final settlement made in Germany between the firm of Theodor Wille and the German executors and Mrs. Sielcken of all claims the firm of Theodor Wille had against Sielcken or his estate or the firm of Crossman & Sielcken. 1094

I also had confirmatory word of that earlier settlement made in Germany from Mr. Charles E. Hotchkiss of the firm of Davies, Auerbach & Cornell, who said he was familiar with that settlement.

I also met in Hamburg Dr. Baur, who had formerly been associated with Dr. Kaemmerer, who had acted as counsel for the German executors of Hermann Sielcken in the incomplete German arbitration proceeding, above mentioned, and Dr. Baur put Dr. Kaemmerer's files in the Arbitration proceedings and in connection with the so-called indemnity agreement at my service. 1095

It is true that the Memorial filed against Germany in 1922 on account of these cargoes claimed to recover only a one-half interest in the Cargoes, on the theory that Theodor Wille was responsible to Crossman & Sielcken for one-half of the loss.

It is my understanding that the counsel who presented that Memorial in 1922, namely Mr. Leonard B. Smith of New York and Mr. Kerr of Washington, at the time of filing those Memorials of 1922 were aware that the firm of Crossman & Sielcken had in 1917 claimed that they had the right to look to the firm of Theodor Wille for one-half of the loss on the seized cargoes and that their Memorial No. 2 of 1922 showed this claim. They were also aware at that time that Mrs. Sielcken claimed to have adjusted that matter herself with the firm of

1096 *Answering Affidavit of Brainard Avery*

Theodor Wille, but at that time there were two very large claims outstanding against the estate of Sielcken in this country, namely a claim of the Woolson Spice Company for something over One Million Dollars and a claim of Mrs. Blackwell amounting to about half of the estate, which were being litigated. The executor under the advice of its counsel took the position that Mrs. Sielcken had no authority to make a settlement of any claims of the firm, and that the supposed settlement with the firm of Theodor Wille made by her was not binding.

1097 There were three Memorials filed in 1922, of which only No. 2 referred to this matter.

Prior to the filing of the Memorials, Mrs. Sielcken wrote a letter to the Columbia Trust Company, as Executor of Sielcken, under date of December 11, 1922, reading as follows:

"Joseph S. Auerbach
Edward Cornell
Charles E. Hotchkiss
Charles H. Tuttle
Nicholas F. Lenssen
Warner B. Matteson
Harold C. McCollom
1098 Martin A. Schenck

Cable Address
'Overdare'

DAVIES, AUERBACH & CORNELL
Mutual Life Building,
34 Nassau Street

New York December 11, 1922

Estate of Hermann Sielcken, deceased.

Dear Sirs:

Concerning the proposal made at the conference in your office held December 8th, that you, as the executor of Mr. Sielcken's will, should file a claim with the Mixed Commission (constituted under the recent treaty between the United States of America and Germany) to recover an item of approximately $94,000 and interest, appearing upon the dollar account on the books of Crossman & Sielcken as owing from the firm of Theodor Wille, Hamburg, I herewith advise you that as the residuary legatee under said will I have no desire that this item should

be enforced as an obligation against said Theodor Wille. If, however, you deem it necessary, for your protection as such executor, to file such claim in order that no claims of creditors against the estate of Mr. Sielcken may be prejudiced, I desire that when the estate is in such condition that you are charged with no duty to collect said item other than for my personal advantage as residuary legatee, you shall withdraw said claim and prosecute it no further.

I remain,

Very truly yours, 1100

CLARA SIELCKEN SCHWARZ

Columbia Trust Company, as
Executor of the Last Will and
Testament of Hermann Sielcken, dec'd,
George E. Warren, Esq., Vice Pres.,
60 Broadway,
New York City."

The Memorials were then filed.

In 1923 the Woolson Spice and Blackwell claims were finally disposed of for much less than had been reserved to meet them and Mrs. Sielcken Schwarz was thereafter 1101 the only person having a beneficial interest in the estate.

About that time, too, these attorneys learned that that settlement had not been made by Mrs. Sielcken Schwarz alone with the firm of Theodor Wille, but that the German Executors of Sielcken had joined in making the same and that they were claiming that any sums due from persons in Germany were estate of Sielcken that they as German executors were entitled to collect in Germany.

Mr. Leonard B. Smith, in 1927, informed me that in view of Mrs. Sielcken's expressed wishes, she being the only person remaining interested in the estate, and the extreme difficulty of overturning that settlement in conflict with her wishes, and no interest of any third party being involved, the Executor notified the Mixed Claims Commission that it withdrew each of the said Memorials,

the other two Memorials having been practically disposed of by adverse rulings of the Commission in other cases which rendered them untenable, and the executor in this manner acknowledged that settlement made by Mrs. Sielcken with the firm of Theodor Wille, and in early 1924 directed that all three of those Memorials be withdrawn and the item of this claim against Theodor Wille for a share of the loss on the cargoes was then charged off to Profit and Loss on the books of Crossman & Sielcken, with the approval and consent of Mrs. Sielcken Schwarz and of Messrs. Nielsen and Sorenson and the 1103 American Executor.

I was informed in 1927 and 1928 by Carl Isenberg and Mr. Hotchkiss, and by counsel for the firm of Theodor Wille, that by reason of this settlement made in Germany with that firm, it no longer, in 1927, had any interest whatsoever either in the seized cargoes or in any recovery that might be made for the seized cargoes, or of the price of the seized cargoes; nor did they or their representatives thereafter ever at any time assert to the plaintiffs or to the American Executor or to deponent or his firm any claim that they had any interest whatsoever in the recovery made in this suit.

1104 These assurances were later confirmed in April, 1928, by the submission to deponent in Berlin of a draft of the answer of Germany and Wille to the Memorial against Germany with Theodor Wille impleaded, which answer was subsequently filed on October 30, 1928, in that proceeding, in substantially the same form. This draft of answer was shown to deponent in Germany about April, 1928, by Dr. von Lewinski (the German Agent before the Mixed Claims Commission), and by counsel then representing the firm of Theodor Wille.

At one of the Wille conferences in April, 1928, the counsel for Theodor Wille in answer to my direct question assured me that Wille had no claim against Crossman & Sielcken and that every such claim had been settled.

Deponent, while in Hamburg in 1927, saw in Dr. Kaemmerer's files copies of the said arbitration papers and

alleged indemnity agreement, which were later, to wit, on October 30th, 1928, filed with the answer on behalf of Zentral Einkaufs Gesellschaft to the Memorial against it before the Mixed Claims Commission, such papers being contained in the Exhibits A to L of that answer, in German, with translations of each paper into English as Exhibits A 1 to L 1 thereof. Copies of such Exhibits including the translations are hereto annexed, marked Exhibit B and hereby made part of this affidavit.

Deponent at once, with Mr. Wirth, questioned the validity and binding force of the said arbitration pro- 1106
ceedings and of the so-called indemnity agreement, under our law. Dr. von Lewinski, however, asserted that it was a German contract made in Germany between Germans, to be performed in Germany, and that it would be construed under German law, and doubtless in the German Courts; and that in his opinion it was a valid and binding contract under German law, and binding on the Sielcken estate in Germany. That our view was correct also under German law was supported later by the opinion of Dr. Neuman, a very prominent German lawyer, who had made a specialty of Commercial law, which was filed with the American Agent before the Mixed Claims Commission in November, 1928. 1107

In 1927, prior to bringing this suit in this Court, both Mrs. Sielcken and her son Alexander Wendroth Sielcken had informed me that Hermann Sielcken had maintained his domicile in New York from long prior to 1913 up until his death; that his last illness had been quite prolonged, extending for many months prior to his death on October 8, 1917; that he had maintained a summer home at Baden-Baden, in Germany, and was there when his illness became acute in the spring or early summer of 1917; that he was confined to his bed for several months before his death and entirely unable to be moved; that he was registered by the German authorities as an American citizen and as an enemy; that he actually was an American citizen; that Mrs. Sielcken-Schwarz, the residuary legatee, had come to this country in October, 1919, by permission of the United States; that she had

1108 *Answering Affidavit of Brainard Avery*

taken proceedings in the California Courts to re-establish the record of Sielcken's naturalization in California as an American citizen and had succeeded in re-establishing that record; that the Alien Property Custodian and the Attorney General had thereupon, in 1921, released her interest in the estate of Hermann Sielcken, which the Alien Property Custodian had seized in October, 1918; that she had afterwards married Mr. Schwarz, who was a citizen of Latvia, and that after her marriage to him she, Mrs. Sielcken-Schwarz, had been naturalized as an
1109 American citizen here in New York in the year 1922 and was herself residing in New York, where she had bought a home and had voted. And deponent and his associates so believed.

Deponent also was informed by Mr. Hotchkiss from the accountings of the executor which were of record in the Surrogate's Court in New York that all debts of the decedent Sielcken and all legacies to other persons than said Clara Sielcken-Schwarz under the will of Hermann Sielcken had either been paid or had lapsed, and she was then the only person having an interest in the estate as sole residuary legatee thereof, and deponent and his associates believed all these statements and relied thereon
1110 in filing the bill herein.

At the time of filing the bill in this cause, the Circuit Court of Appeals in this District had recently filed its decision in the case of Stadtmuller vs. Miller, 11 Fed. (2d) 732.

We were informed by Mrs. Sielcken and her son that Mr. Sielcken had been a very sick man on April 6, 1917, and from as early as the spring of 1916 had been continually confined to his bed and so ill after March, 1917, that it was impossible to move him out of Germany at any time prior to his death on October 8, 1917; that throughout the first week in October, 1917, he was very low and obviously the end was near; and that he died on October 8th, 1917.

They also informed us that Mr. Sielcken was an American citizen and had always maintained his home in

New York and regarded his residence in Baden-Baden as merely temporary, and they, I think, used the expression that it was his "summer residence."

They also told us that he had retained his apartment by the year at the Waldorf Astoria from as early as 1910 until his death, and told us of the proceeding in California to which the Alien Property Custodian became a party, by which the record of his, said Sielcken's, naturalization as an American citizen had been re-established, and that upon that judgment of the California Court reinstating the record of Mr. Sielcken's naturalization being confirmed on appeal the Alien Property Custodian had released the interest of Mrs. Sielcken under the will of Hermann Sielcken from his prior seizure thereof in October, 1918. 1112

We believed all the foregoing statements made us to be true and relied on them in instituting this suit and in filing the Memorials of 1927.

Under the decision in the Stadtmuller case above cited and other then recent cases, my partners and I were of opinion that, despite his being in Germany from April 6, 1917, until his death, Mr. Sielcken had not been an enemy, and we so contended.

We had not heard, and knew nothing of the alleged proceeding instituted in Mr. Sielcken's name in Baden for his renaturalization as a German, which was brought to our attention only very much later, and was first suggested to us by the answers filed on behalf of the Zentral Einkaufs Gesellschaft and Theodor Wille to the Memorials we had presented before the Mixed Claims Commission—United States and Germany, about November 9, 1928, which, however, made only indefinite reference thereto, and we actually learned definitely of that alleged application only in 1934 or 1935. 1113

The contentions of the Irving Trust Company made in 1931 and 1932 in the action in the Supreme Court of New York instituted by the Chase National Bank as Ancillary Executor of Thorleif S. B. Nielsen against John S. Sorenson, Mrs. Sielcken Schwarz (formerly Mrs. Sielcken) and the Irving Trust Company as executor of

Hermann Sielcken, referred to in the moving papers, were not brought to our attention in 1927 or until after May, 1930; and my associates and I were not familiar with the decision of the Court of Appeals of New York in the peculiar case of Smith v. Proskey, 177 N. Y. 526; and, as I testified in that Chase Bank case (in a portion of my testimony there, in 1932, which has been omitted from the extracts from that testimony presented by the moving papers), I had never heard of that case and the ruling there made came as a surprise to me when pre-
1115 sented in support of their arguments by counsel for the American Executor of Sielcken in that Chase Bank case.

The decision of the Supreme Court in that Chase Bank case on that point was not given until the summer of 1933, more than three years after the payment of the decree in this suit by the Alien Property Custodian and the Treasurer of the United States. Moreover, the decision and the judgment in that case did not go so far as to hold that actions and suits to recover assets belonging to the firm were not properly maintainable in the names of the surviving partners, but only that the surviving partners were not liquidating partners, and that consequently after the recovery of the moneys the
1116 right to possess and administer the same did not belong to the surviving partners, but to the Executor of Sielcken.

At the time of bringing this suit in 1927, my associates and I all believed that any suit or action to recover any assets belonging to the firm should properly be brought in the names of Sorenson and Nielsen as surviving partners.

Deponent and the lawyers immediately associated with him in charge of the case were by no means alone in the belief at that time that Sorenson and Neilsen as the sole surviving members of the firm were the proper parties to maintain a suit to recover a partnership claim. That view was shared by the firm of Chadbourne, Stanchfield & Levy, who took that position in the course of the trial of the Chase National Bank suit. The same opinion was also held by Messrs. Davies, Auerbach & Cornell, who

had previously, in 1918, brought an action to recover a large claim due the firm of Crossman & Sielcken, in the names of Sorenson and Nielsen as surviving partners of that firm. That suit involved a claim exceeding $100,000 and the same view was apparently shared by the attorneys who had defended that action, Messrs. Griggs, Baldwin & Baldwin of New York, including Mr. Martin Conboy, formerly United States District Attorney for the Southern District of New York, as they settled the case without raising any such question, the defendant paying approximately $100,000. It was also the opinion of Mr. Sorenson's counsel, Mr. Murray D. Welsh. 1118 It was apparently also the opinion of Mr. Thomas E. Rhodes, the Assistant Attorney General and counsel to the Alien Property Custodian and the United States Treasurer in the present suit, who raised no such objection.

We made no secret of the interest of the American Executor in any sum to be recovered by this suit, but on the contrary had declared fully in the Memorial against the Zentral Einkaufs Gesellschaft which was filed by us with the Mixed Claims Commission—United States and Germany, about a month before this suit was commenced, the nature of the interest of the American Executor of Sielcken. 1119

That Memorial was fully known to Z.E.G., which filed its answer thereto on October 30, 1928.

Mr. Rhodes, the Assistant Attorney General who was counsel for the United States Treasurer and the Alien Property Custodian in this suit, knew of that Memorial and had access, if he desired, to all the files before the Mixed Claims Commission in that proceeding, and I cannot believe that so careful a lawyer as he failed to read that Memorial and the answer thereto before stipulating in this suit (prior to the trial thereof), as he did, that any of the Exhibits filed with the Mixed Claims Commission in connection with the answer of Z.E.G. to the similar claim there made, might be introduced in evidence on the trial of this case without further proof thereof. My recollection, too, is that on several occasions

1120 I talked with him prior to 1930 concerning the Z.E.G. files before the Mixed Claims Commission.

Before the Mixed Claims Commission it was, we thought, necessary to bring in every person directly interested in the recovery as a claimant; but in this suit we believed it proper in law that the suit should be brought in the names of the surviving partners alone, without joining the American Executor as a plaintiff. And we believed the surviving partners were the only proper plaintiffs in this suit, and when I testified in the Chase Bank action that we brought the suit in that way 1121 "in order to make it stick," I meant that we brought it in their names because we believed that that was the only proper way to bring it; while if, on the other hand, any objection were raised by any of the defendants to the absence of the Irving Trust Company as Executor, it could readily be brought in as a co-plaintiff or defendant by amendment of the bill, without in any way endangering the jurisdiction of the Court over the claim and its right to grant us relief, since all debts of the Sielcken estate had been paid as far as known or asserted, and all legacies under the will except the residuary legacy to Mrs. Sielcken (now Mrs. Sielcken Schwarz) 1122 had either lapsed or been fully paid, and she had been recognized as an American citizen by the Alien Property Custodian in 1921 and had also previous to that time voted as such; and while she had later married Mr. Schwarz, who was a Latvian, she had, after that marriage, been naturalized as an American citizen in 1922 and there was, therefore, no enemy interest in the claim represented by the executor, known to us.

Before instituting the suit, we also discussed very fully the question of the proper district in which to bring the suit. At first we thought the proper district would be either the Eastern District of New York because Mr. Sorenson resided there, or the Northern District of New Jersey because Nielsen resided there; and we actually filed papers in a suit in the United States District Court for the Eastern District of New York and then when the

papers were only partially served withdrew them and cancelled that suit, because we came to the conclusion that the Southern District of New York was the proper district.

The section of the "Trading with the Enemy Act," under which this suit was brought, reads:

"Sec. 9. That any person, not an enemy, or ally of enemy, claiming any interest, right, or title * * * institute a suit in equity in the district court of the United States for the district in which *such claimant* resides, or, if a corporation, where it has its principal place of business, to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant," etc., etc. 1124

The "Trading with the Enemy Act" repeatedly speaks of a partnership as having a residence (see Sec. 2 [a]; Sec. 2 [c]-[a]; Sec. 2 [c]-[c]) and provides that "the word 'person' as used herein, shall be deemed to mean an individual, partnership," &c.

Moreover, Mr. Barnes found a case under a similar act, the Tucker Act, where suit had been brought by the surviving members of a partnership in the district where the partnership had always resided and had had its principal place of business, although the surviving partners resided in other districts and the jurisdiction of the district court in that district had been sustained without discussion of the merits of that question, on the ground that no objection had been taken until after answer on the merits. I think the case he found was the decision in *Matter of Hvoslef*, 237 U. S. 1. It was then a comparatively recent decision and he patterned the allegations in our bill on the allegations in that case, and we filed the bill (after dismissing the bill in the Eastern District), in the Southern District. 1125

That there was no bad faith in doing so is obvious from the fact that the individual residences of Sorenson in Brooklyn and Nielsen in New Jersey were stated openly in the bill, as well as the fact that the partnership residence had always been in the Southern District. We even

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went further and (although there had been no denial of these allegations in the bill) put in that evidence orally, so that it was called directly to the attention of the Court. No one, either party, counsel or Court, raised any objection on the ground that the Southern District was not the proper district.

The actual claimant here was not Sorenson nor Nielsen individually but the firm, of which they were the surviving partners.

The provision as to the district in which suit may be brought, especially in view of the general jurisdiction
1127 conferred on the District Courts in all cases by Section 17 of the Trading With the Enemy Act, seems to be, like all other such provisions, a mere provision as to venue and not jurisdiction; and a mere modal objection which is waived if not taken before answering on the merits, and which cannot be raised after pleading to the merits. (Matter of Hvoslef, 237 U. S. 1.)

The moving party has not, in its present motion, pointed out in what the alleged lack of jurisdiction consists. It was our unanimous opinion at the time that the Southern District of New York was the proper district and also if any objection were to be raised on the ground that
1128 the suit should be brought in another district or court that objection would have to be raised before answering upon the merits or it would be waived.

Deponent again calls the Court's attention to the fact that there was no concealment of the residences of the plaintiffs; and that they were not only openly stated in the bill, but were equally openly stated in evidence before the Court, although the allegations of the bill have not been denied.

It is also true that the interest of Hermann Sielcken's executor was fully disclosed at the trial, the partnership articles being introduced in evidence and the Court's attention being called specifically to the provisions directing that the surviving partners should turn over the entire partnership property to the executor.

These matters were even more fully stated in the Z.E.G. Memorial with which the attorneys for all parties in the suit were familiar.

The facts were thus stated openly to the Court, on each of the possible questions involving its jurisdiction, and the Court determined the facts in favor of the plaintiffs.

Shortly after the service of the subpoena *ad respondendum* herein on the Z.E.G., Dr. von der Decken, one of the German counsel for the Agent to the Mixed Claims Commission, who later presented the answer of the Z.E.G. 1130
to the Memorial, made a suggestion that he did not see the real purpose of this suit, as if the suit were successful and recovery were effected the estate of Sielcken would be bound to reimburse the Z.E.G. for any amount for which Z.E.G. was held liable to Crossman & Sielcken. This suggestion was made by Dr. von der Decken to my associate, Mr. Richard S. Doyle of Washington, in the presence of Mr. Martin, Counsel for the American Agent, and reported to me by Mr. Doyle.

After some discussion, it was suggested that if Dr. von der Decken would obtain from Germany the papers relating to the incomplete arbitration proceeding and to the obligation he claimed had been assumed by the Ger- 1131
man Executors of the estate of Hermann Sielcken and permit the American Agency and the attorneys for Crossman & Sielcken to examine these papers, the attorneys for Crossman & Sielcken would delay any further steps pending the examination of these papers and would not meantime enter judgment by default. This suggestion did not have direct fruition, but Dr. von Lewinski, the German Agent, made a suggestion to Mr. Bonynge that some one go over to Germany and meet the German counsel for those interested in the two Memorials and the German Agent or his representative and discuss matters over there. Mr. Bonynge, the American Agent, told me of this, saying he could not go, and he suggested that I go, and I accordingly left for Germany about March 3, 1928, going to Berlin, where I retained as our

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local representatives Mr. Fred Wirth and Dr. Karl Hirschland of the Berlin bar.

Before leaving for Germany, deponent had explained either to Mr. Bonynge, the American Agent, or to Mr. Martin, his counsel, that in the opinion of deponent not only was the incomplete arbitration (supposed to have occurred at the height of the war between United States and Germany in 1918) a nullity (as it was afterwards held to be by this Court) but that the alleged indemnity agreement was of doubtful validity.

1133 Both Sorenson and Nielsen were emphatic in their protests that any arbitration or settlement in Germany was unquestionably void as to them and their interests, as they had been given no notice of any such proceeding and the German Executors of Hermann Sielcken had no right, title or power to represent them in any capacity, and that the arbitration was particularly improper because it was made in Germany at the height of the war between Germany and the United States.

The two Memorials which were filed on November 3, 1927, the one against Z.E.G., and the still larger one against the firm of Theodor Wille, were both prepared by Mr. Earle B. Barnes, Mr. Richard S. Doyle and my-

1134 self with the assistance of Judge Charles D. Hamel and Mr. H. H. Martin.

The Memorial against Germany impleaded with Theodor Wille arose out of a large amount of German bonds and Marks claimed by Crossman & Sielcken, which had been withheld by the firm of Theodor Wille under instructions from the German Treuhänder, under the special War Legislation of Germany, on the basis of depreciation of that property during the period that it was so withheld by orders of the German Government; and also on the basis of the possible question whether the firm of Theodor Wille had actually purchased with funds sent them the bonds that they claimed to have bought and to hold, or had "bucketed" the transaction.

The Memorial against Germany impleaded with Z.E.G. proceeded on the claim that Z.E.G. was responsible for

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the price of the seized cargoes, being substantially the same claim as was later presented in the present suit.

Before taking each step in the matter, deponent consulted with the American Agency and particularly with Mr. H. H. Martin, the attorney for the American Agent, Mr. Bonynge, and attempted in every way to follow their suggestions and advice.

Before filing the Memorials and starting this suit, we discussed the pros and cons of filing both a Memorial and this suit with regard to the Z.E.G. claim with Mr. H. H. Martin and he expressed the opinion to us that he

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thought the two could go on together side by side until recovery was had in one or the other, and that probably this suit under the "Trading with the Enemy Act" would give more prompt relief than the proceeding before the Mixed Claims Commission, especially as there seemed to be an ample fund available to meet any recovery.

In preparing the Memorials we joined not only Sorenson and Nielsen but also the Irving Trust Company as executor of Hermann Sielcken, deceased, because it was in our opinion essential in that proceeding that all interests directly involved should be represented in the proceeding.

We duly filed a claim in accordance with the provisions

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of the "Trading with the Enemy Act," and then prepared a bill in equity for the Eastern District of New York, which district we, at first, selected because of Sorenson's residence there.

Immediately after filing that bill the attorneys connected with the proceeding all came to the conclusion that while the Eastern District of New York had been selected because of Sorenson's residence there, the Eastern District of New York was not the proper district in which to file the suit, but that the Southern District of New York was the proper district because the residence of the partnership, which was the claimant, had always been in the Southern District of New York and the "Trading with the Enemy Act" twice referred to the residence of a partnership and provided that the claim might be sued upon in the district of the residence of the claimant.

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The claimant in this instance was the partnership in liquidation and not either Sorenson or Nielsen as an individual. Sorenson resided in the Eastern District of New York; Nielsen resided in the Northern District of New Jersey; Sielcken, as we were all informed and believed, had, from as early as 1905, been domiciled in the Southern District of New York and had there maintained his residence until his death, and his American Executor was the Columbia Trust Company (now Irving Trust Company) whose residence and principal place of business was at all times since 1910 in the Southern District
1139 of New York. In view of all these facts, we came to the conclusion that the Southern District of New York was the proper district in which to bring suit.

We also (that is, Mr. Barnes, Judge Hamel of Washington, Mr. Richard S. Doyle of Washington, his partner, and myself) all discussed the question of who should be the plaintiffs in the suit brought, and we all came to the conclusion that the only proper plaintiffs in the suit were John S. Sorenson and Thorleif S. B. Nielsen as surviving liquidating partners of Crossman & Sielcken, and we so advised them.

At that time none of us was familiar with the special
1140 rule established in New York by the decision in the case of Smith vs. Proskey, and we believed that the surviving partners were the proper persons to maintain the suit, but we also believed that if any objections were made that the executor of Sielcken should also be made a party, the executor could be brought in by amendment.

The bill herein was filed on December 21, 1927, and subpoena *ad respondendum* was served on the defendants Sutherland and Frank White on the 22nd of December, 1927. On the 19th of January, 1928, the affidavit and order for service on Z.E.G. by publication was filed. On the 23rd of January, 1928, notice of appearance of the United States District Attorney for Howard Sutherland and Frank White was filed herein together with the combined motion to dismiss and answer on the merits of the defendants Sutherland and White. On January 23, 1928, there was filed herein the affidavit of mailing of

the subpoena *ad respondendum* to the defendant Z.E.G.

The suggestion made to me by Mr. Bonynge with regard to my trip to Germany was that I should make every effort to obtain full data in relation to the incomplete arbitration and the alleged indemnity agreement, and any other information I could get hold of as to the German position. I had no suggestion or instructions from either Mr. Bonynge or his counsel, Mr. Martin, that I was to discuss any question of settlement of the litigation, nor had I discussed any possibility of any such suggestion coming up with any of my associate counsel 1142
in the case, Mr. Barnes, Judge Hamel or Mr. Doyle.

Before going to Berlin I spent a week in London going over the records there relating to the seizure of the cargoes in question in the Admiralty Court and in the office of Messrs. Burne and Berridge, who had been the proctors representing Crossman & Sielcken in the Admiralty Court, and there acquainted myself as far as possible with all information I could get there. Previous to sailing from New York I had also gotten together all available information from the office of Mr. Stewart in Boston, who had at one time been trying to assert a claim against the British Government, through diplomatic channels, for the value of the cargoes of the seized vessels. 1143

We had a number of conferences in Berlin with officials of the German foreign office, some of them relating to the Memorial against Wille at which counsel for the firm of Theodor Wille were present, but not the counsel for the Z.E.G., and others of these conferences relating to the Memorial aginst Z.E.G. and the present suit, at which the attorneys representing the Z.E.G. were present, but not the attorneys representing the firm of Theodor Wille, who made no suggestion of being interested in the Z.E.G. matter, and who disclaimed having any interest therein.

At all the conferences (with one possible exception) there were also present Dr. von Lewinski (the German Agent before the Mixed Claims Commission), who, in a general way acted as Chairman of the Conferences, a number of gentlemen from the Berlin Foreign Office and counsel for Dr. von Lewinski.

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Before I left New York for Berlin, the suggestion had been made by Dr. von Lewinski or from his office, that instead of having the papers suggested by Dr. von der Decken sent from Berlin to Washington, they should be shown me in Berlin where we could have the fullest opportunity of examining them. One of the main purposes of my trip was to secure an examination of those papers.

At one of the meetings over the Z.E.G. claims, there were produced and furnished me copies of all the Exhibits A to L later annexed to the Z.E.G. Memorial,
1145 which included the so-called Indemnity Agreement, as being the papers on which they relied as constituting the arbitration agreement.

They also showed me, but did not at that time deliver to me, a copy of a draft of the proposed answer of Germany to the Memorial against Germany and Z.E.G. which conformed substantially to the answer subsequently filed by Germany to the Z.E.G. Memorial. They, however, did not furnish me with a copy of it at that time, claiming that it was not yet in final form.

I was accompanied at each of these conferences by Mr. Fred Wirth and frequently by Dr. Hirschland.

At one of these Z.E.G. conferences, one of the German
1146 representatives suggested as to this Z.E.G. claim that they might withhold any answer to this suit (although they claimed to have a good defense) and that we would then be able to collect out of the fund held by the Treasurer of the United States and the Alien Property Custodian; and that we be allowed to do this and keep the money we collected, the indemnity agreement discharged and that both Memorials be completely withdrawn as a settlement of the entire matter.

This suggestion was entirely unexpected, and had not been solicited by us in any way. Upon its presentation Mr. Wirth stated that we would take the suggestion under advisement and would report at the next meeting of the conference, a date for reconvening being fixed for several days later.

Mr. Wirth and I then discussed this proposal in private, and he and I agreed that it was quite impossible to

accept or even to discuss any such suggestion, both because it was entirely outside of my instructions from Mr. Bonynge, and also because it seemed to each of us that this was attempting to deal with matters affecting the interests of the United States which we could not properly take under consideration without first communicating the matter to counsel representing the United States, both before the Mixed Claims Commission and in this suit.

Upon the reconvening of the meeting about a week later, Mr. Wirth made a formal statement to the German 1148
representatives that it was impossible for us to negotiate with regard to any such matter on any such basis, both because it was beyond our instructions, and because it would be necessary for us to submit the whole matter to the various counsel for the United States before considering it.

Thereupon Dr. von Lewinski had a conference with me, during a recess of the meeting, in which he suggested that as a practical matter we arrange for a fifty-fifty division throughout, as a settlement of all the claims, omitting only certain items in the Wille claim aggregating about $500,000, which he refused to discuss and which he claimed (and which we believed) had been included 1149
in the previous settlement between Mrs. Sielcken, the German Executors and the firm of Theodor Wille; that all defenses be spread upon the record; and that thereupon the German Agent would agree with the American Agent on compromise awards to us of fifty per cent of each of the claims presented by the Memorials (omitting the said items of about $500,000 from the Wille Memorial), and that this be a complete settlement. We were to continue to prosecute the suit, on its merits. If we won they were to receive half the amount recovered in settlement of the claim for indemnity; if we lost the suit we were to receive the fifty per cent award.

I immediately told Dr. von Lewinski that I would have to discuss that with Mr. Wirth, and thereupon Mr. Wirth and I talked it over together, and both of us again agreed that it was entirely impossible to make any

such arrangement or even to negotiate concerning any such proposals without first submitting the proposal in its entirety to the various counsel representing the United States in the several matters. This decision of ours was promptly communicated by us to Dr. von Lewinski.

Dr. von Lewinski asked me where Mrs. Sielcken Schwarz was at that time and I told him that she was in Holstein. He then wanted to know whether, if such a settlement met the approval of the attorneys for the United States, what would be my own attitude concerning it. I said that to me personally it seemed that it would be a "fair
1151 enough" settlement. He then asked me to communicate with Mrs. Sielcken Schwarz and discuss it thoroughly with her, and ascertain whether the suggestion would be agreeable to her if it also met with the approval of the American Agent, Mr. Bonynge; Dr. von Lewinski added that he would meet me in the fall at Washington.

Before sailing back to America, I went to see Mrs. Sielcken Schwarz and discussed the matter with her and she informed me that if such a settlement met the approval of Mr. Bonynge it would be satisfactory to her.

During my 1928 visit to Germany there were no further discussions of the proposals so made, or any negotiations
1152 for settlement with the German representatives in Germany, and I returned to the United States, arriving in New York about the end of May, 1928.

On my arrival in New York, I was met at the pier by my partner, Mr. Barnes, and we at once went to my hotel and there discussed at length what had occurred in Germany. Mr. Barnes agreed absolutely with our stand that we could not discuss any such settlement without first submitting the whole proposal to the counsel for the United States.

Mr. Barnes and I had quite a discussion at that time as to which of us should present the matter to Mr. Rhodes, counsel for the United States in this case. Mr. Barnes suggested that as he was to act as trial counsel in the case he ought to do it, and that I, having been present at the conferences in Berlin, ought to accompany

him. We agreed that we would go together to see Mr. Rhodes and that Mr. Barnes would present the matter while I would be there for reference in case any question came up that needed special information.

We went down to Washington (as I recall it, it was between June 23d and June 30th, 1928) and I then saw Mr. Martin and explained the situation briefly to him. It was not a formal conference as there was no one there representing either Z.E.G. or Theodor Wille or the German Agent. Mr. Martin expressed the view to me at that time that it would be unwise to attempt to make 1154
any settlement until the question of responsibility of Z.E.G. for the price of the cargoes had been tried out in this suit where that issue was squarely raised. After that had been settled, the question of possible settlement of the dispute over the indemnity agreement and over the claim against Wille he thought could be worked out.

After conferences with Mr. Martin, on the same day I went with Mr. Barnes and saw Mr. Rhodes by appointment. It was, as I remember, a very hot day in June. We saw Mr. Rhodes and stayed there discussing the whole situation with him for fully two hours.

Mr. Barnes spoke principally from a memorandum 1155
that he and I had prepared to make sure that nothing was omitted. We had with us, and showed to Mr. Rhodes, a copy of the indemnity agreement and the arbitration agreement of the German Executors and translations of these, and copies of some of the other papers that were later incorporated in the German answer, which copies I had brought from Germany.

Mr. Barnes' statement of the case to Mr. Rhodes included a thorough explanation of the probability of a recovery by a citizen of Germany, in Germany, and in German courts, under the indemnity agreement in spite of our contention that that document was invalid and not binding and also pointed out the adequacy of the individual estate of Sielcken in Germany to meet all requirements of the indemnity.

As I recall it, Mr. Barnes' principal presentation of the facts took fully an hour and after that there was a

general discussion among the three of us and either Mr. Barnes or I explained to Mr. Rhodes the position that Mr. Martin had indicated—that no compromise of the Memorials should be attempted until the question of the liability of Z.E.G. for the cargoes had been determined.

Mr. Rhodes finally stated that he would have to take the matter up with someone else and would let us know. Shortly afterwards he advised Mr. Barnes that the position of the attorney general was that the United States was a trustee of this fund that had been seized by the
1157 Alien Property Custodian and that it could not enter into compromises or concessions over it; that all necessary law points involved in the title to the fund must be presented to the court at a trial at which the Attorney General would take such position as he might be advised but that Mr. Rhodes would endeavor to agree with Mr. Barnes as to what were the necessary law points which ought so to be raised in court.

After this meeting with Mr. Rhodes, I communicated the foregoing to representatives of the German Agent that consideration of the proposals of settlement would have to await determination of this suit. My recollection
1158 is I communicated this directly to Mr. Martin and later Mr. Martin and myself gave this information to Dr. von der Decken, who was one of the counsel for the German Agent, Dr. von Lewinski.

At our long talk with Mr. Rhodes, Mr. Barnes, as arranged, presented the situation that had developed and the proposals made by Mr. Zimmerman and Dr. von Lewinski, and I mentioned to Mr. Rhodes, as I recall it, at that time, the position taken by Mr. Martin that the question of the responsibility of Z.E.G. for the goods while at sea ought first to be tried out in court and that it could be done in this suit. Mr. Rhodes expressed substantial agreement with this view of Mr. Martin's.

At that conference we explained thoroughly to Mr. Rhodes the matter of the indemnity agreement, and the claim that was made by counsel for Z.E.G. that if we did collect from Z.E.G. in this suit Z.E.G. could and

would immediately turn around and sue the German executors of Sielcken under their covenant to indemnify and hold Z.E.G. harmless from any such recovery by the firm.

I explained to him our view that the contract was invalid and that we were securing the opinion of eminent German counsel to that effect, but that inasmuch as any such suit on the indemnity agreement would be brought in Germany before the German Courts and Z.E.G. was really a branch of the government, we very much feared the outcome of any such suit. 1160

Mr. Barnes had agreed with Mr. Wirth and myself that under New York law the indemnity agreement was invalid, but with the German lawyers at odds on the subject we did not feel certain of the outcome of any such lawsuit in the German Courts, especially under the circumstances presented. Moreover (as I think we told him) Mr. Sielcken had left a large individual estate in Germany, which would be ample to meet any such recovery under the indemnity agreement.

I was taken ill about the 13th day of July, 1928, with appendicitis and was too ill to attend to any business until after Labor Day that year, but my recollection is 1161 that the above interview with Mr. Martin and the long conference with Mr. Rhodes, that I have spoken of, occurred in June, 1928, and that the conference with Mr. Martin, myself, Judge Hamel and Mr. Doyle on November 21, 1928, was a second conference, though it is not essential that this should have been so, because I could not see Dr. von Lewinski until he arrived in this country and he did not come until late in the fall of 1928.

I learn that Mr. Martin has the following memorandum of a meeting on November 21, 1928, between himself, Judge Hamel, Mr. Doyle and myself in particular relation to this Z.E.G. claim:

"After an extended conference on the law and facts in this claim, the conclusion was reached that Mr. Avery is to proceed with the suit filed on behalf of claimants under the Trading with the Enemy Act * * * the act

1162 *Answering Affidavit of Brainard Avery*

of prosecution of which suit was suspended last spring pending negotiations that were under way at that time looking to a settlement of this claim and also the claim under Docket No. 8304.

"However before taking further action with respect to this suit Mr. Avery is to write us a letter saying that in view of the breakdown in the negotiations last spring looking to the settlement of this claim he proposes to now proceed with the suit. On the receipt of this letter, a copy thereof will be submitted to the German Agent
1163 for his information.

"We further discussed to some extent the question that the point may be raised either in the Commission or in the court that claimant should be put to his election as to which forum he desires to have his rights finally and definitely passed on. It was decided to leave the final determination of this question to the future should the point be raised."

Deponent recalls that there was a conference at which these statements were made.

Not later than November 27, 1928, deponent caused notice to be given to the German Agent, Dr. von Lewin-
1164 ski, that the proposed settlement could not be considered at this time, and that we would proceed with this suit. Mr. Doyle so wrote the American Agent under date of November 26, 1928, and a copy of Mr. Doyle's letter was submitted to the German Agent on November 27, 1928.

Shortly prior to this conference in November, 1928, the German answers to the two Memorials had been filed with the Mixed Claims Commission. An effort was then made by us to secure an audit of the books of Theodor Wille relating to the investment in German bonds in 1916 by the firm of Price, Waterhouse, as representatives of the American Agent.

The Wille claim, as it stood, was based on two alternative theories, one that Theodor Wille had actually purchased the bonds, as claimed by that firm, but had withheld them from delivery, despite demand for them, under the special German Wartime legislation, from about the

time that the United States went into the war until the Treaty of Peace, during which period repeated demands for surrender of the bonds had been refused by Theodor Wille and the bonds had gradually depreciated until they were worth very little. On that theory, the claim of the Memorialists was for the amount of that depreciation with interest. The other theory was that Theodor Wille had not actually purchased the bonds, but had entered them up as purchased and had itself "bucketed" the transaction, on which a somewhat larger recovery, consisting of the amount of money entrusted to them and 1166
interest, was claimed.

The firm of Theodor Wille declined to submit its books to the examination of any American accountants.

Shortly after the decision that we would not proceed to a settlement until this present suit had been tried, Z.E.G. filed its answer in this suit, namely on the 6th day of September, 1929, the plaintiffs voluntarily releasing Z.E.G. from its prior default.

Z.E.G. then made a motion to dismiss the Memorial against it, on the ground that it was a mere duplication of this suit. This claim was advanced on substantially the theory of "another action pending." We maintained, 1167
with care, that such was not the case; that the two jurisdictions were independent, and, moreover, that the parties were different, and the relief sought differed; so that there was no reason for dismissing either case, although recovery in either might dispose of the other.

Our contentions found favor with the Commission, which denied that motion. And we then proceeded with the preparation of this case for trial.

At about this time I retained Mr. George W. Alger of New York as additional counsel for the preparation and trial of the case, so that if anything happened to Mr. Barnes (he has since died) by reason of which he could not conduct the trial, Mr. Alger would be able to take it up and go on with it.

The idea was expressed by all the attorneys in the suit, as I recall it, that this suit would in the main turn on

the one question, whether Z.E.G. was liable for the price, in view of the fact that the British seizure was made while the goods were still at sea.

The trial of this suit occurred on December 20 and 21, 1929, in New York before Judge Caffey. Early in the hearing, Judge Caffey expressed the view that the German Executors of Sielcken had no authority to settle or otherwise dispose of a partnership asset which had come into existence prior to our entering the war, out of the 1914 and 1915 transactions. This was said by
1169 Judge Caffey in connection with the claim asserted by Z.E.G., that the incomplete arbitration which had resulted in the indemnity agreement between the German Executors of Sielcken and Z.E.G. amounted to a bar of the right of the plaintiffs to maintain this suit.

That point having been disposed of, there remained only the question whether, under the original contract, Z.E.G. was liable as purchaser for the goods, although seized while on the high seas by the British Government. On this point Judge Caffey ruled with the plaintiffs.

It was obvious to all of us that the so-called indemnity agreement, if it could not be treated as a settlement made
1170 by the German Executors on behalf of the firm of Crossman & Sielcken, was an independent contract which could not affect the judgment in this case, but only give rise to an independent claim by Z.E.G. against the German Executors of Sielcken, after recovery and collection in this cause. The validity and effect of the indemnity agreement in that connection was therefore not directly presented or argued on the trial of this suit.

On November 14, 1929, shortly before the case was reached for trial, there was a meeting in New York between the attorneys and representatives of Z.E.G., namely, Dr. H. F. Albert, Mr. Arthur Garfield Hays and Mr. Hays' partner, Mr. William Abramson, on the one part, and Mr. Barnes, Mr. Alger and myself on the part of the plaintiffs, for the purpose of arranging a stipulation of evidentiary facts affecting the seized cargoes, for the purposes of the trial of this cause, in so far as the parties

could agree thereon. Before the trial was reached, we stipulated both with Mr. Hays and Mr. Rhodes, in writing, that any of the papers filed with the Z.E.G. answer to the Memorials as exhibits might be given in evidence in this case without further authentication.

On the day following this conference, I sent a full account of what had occurred thereat to Mr. Martin, in a letter to him of November 15, 1929, reading as follows:

"November 15, 1929.

1172

"Hon. H. H. Martin, Counsel
Mixed Claims Commission,
1511 K Street,
Washington, D. C.

Dear Mr. Martin:

Dr. H. F. Albert, attorney for ZEG, arrived in New York on S.S. Bremen Tuesday, November 12th. A meeting was scheduled with him and Mr. Hays for Wednesday, the 13th. Mr. Hays was called to a trial, so the meeting did not occur until yesterday, Thursday, the 14th.

"Yesterday we were in session at Mr. Hays' office from two until after four P. M. There were present 1173
Messrs. Albert, Hays and Abramson, representing ZEG, and Barnes, Alger and myself representing claimant.

"Considerable time was spent in discussing stipulations covering seizure of the cargoes by the British, etc.

"Then Mr. Hays again brought up the question of settlement. The move for settlement was in the first instance made by Mr. Hays. Mr. Abramson expressed his disappointment that we were unable to settle in Berlin; and again Mr. Hays opened the subject. I mention this to indicate that we are receptive rather than pushing.

"As you are aware, what we are discussing is a possible settlement of a claim which arises in event we succeed in the litigation now pending in the U. S. Courts in this city. On the face of the papers, if C. & S. in Liq. obtain a recovery against ZEG, a claim may exist on the indemnity agreement given by the Sielcken executors to ZEG in Germany in settlement of the arbitration proceedings.

"Dr. Albert was suffering from severe hoarseness and was unable to speak readily, although Mr. Hays is evidently the spokesman. It is clear to us that notwithstanding what they may have said to the effect that Germany's interest is to defend the ZEG fund with the APC, Messrs. Albert, Hays, *et al.*, are much more interested in arriving at a settlement pursuant to which we recover the cash from the APC and pay over the amount in settlement directly to ZEG, or through its counsel. In fact, I brought that idea conspicuously to the front by
1175 remarking that Mr. Hays wanted the pie on the table, in preference to dividing a supposititious pie.

"The tentative settlement figure suggested by Mr. Hays is not to be considered by us except in connection with settlement of the Wille claim pending before the German Mixed Claims Commission. We might agree to Mr. Hays' suggestion about settlement of the ZEG claim, provided a suitable compromise is arranged of the Wille claim pending before the Commission. That is, if the German Agent is liberal on the Kriegseinleihe and mark items, we might be able to meet the hopes of Mr. Hays.

"Dr. Albert stated that Mr. von Lewinski expected to
1176 be on the Bremen, but was detained. He said he expected Mr. von Lewinski to arrive on November 18th, or at latest during that week (next week). Thereupon the meeting adjourned, with the understanding that we will reconvene upon the arrival of Mr. von Lewinski, although it is not promised that Mr. von Lewinski will attend our meeting. Dr. Albert did state that Mr. von Lewinski stipulates that whatever we do shall meet with the approval of the American Agent, referring to you by name.

"The ZEG case can hardly be reached for trial next week. There are about 20 cases ahead on the calendar, and possibly the case may not be reached until early December. In fact, we think it will be a misfortune to push the ZEG case on for trial until the negotiation for settlement occurs under the supervision of the German Agent and the American Agent.

"Will it be possible for you to be in New York to attending a meeting? We have been loath to take the

matter up with Mr. Bonynge. He is, of course, here, but Mr. Alger says attending on Mrs. Bonynge's recovery from an operation at the hospital, and physically very much below par himself. If you think we should take it up with Mr. Bonynge, however, please let us know.

"It is more than evident that Dr. Albert and Mr. Hays are urging settlement, but it would appear that the whole matter must remain in abeyance until it receives Mr. von Lewinski's attention.

1178

Sincerely yours,

A/B BRAINARD AVERY."

The statements in this letter are as full and accurate a statement as I can now make of what occurred at that meeting, and are true.

I call particular attention to the statement to Mr. Martin of my view of the attitude of Messrs. Albert, Hays, *et al.*, as showing very clearly how frankly the whole situation was laid before Mr. Martin by us.

The letter of November 16, 1929, from Mr. Martin to myself, which is given in the moving affidavit of Mr. 1179
Sterck, verified May 18, 1938, on page 14 of that affidavit, is Mr. Martin's letter in answer to the foregoing letter that I had sent him.

I do not know whether Mr. Martin made any communication to Mr. Rhodes on the subject of my letter to Mr. Martin of November 15, 1929, nor do I at this time recall having said anything to Mr. Rhodes myself about it up to the time of the trial. At all events, no further communications or conferences were held looking to any compromise of any branch of the case until after the trial and entry of the decree herein.

The case was tried carefully on Mr. Hays' part. All the points that had been discussed between us were raised by him, and fully and carefully argued before the Court, and the decision was in our favor, with a direction to the parties to settle the form of decree.

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The decree itself was, as I recall it, drafted by Mr. Rhodes and approved by us, but a further question arose before the filing of the decree as to the rate of interest and the time from which interest would run. Briefs were submitted by the parties on that point and a second brief opinion on the point was given by the Court. The decree was signed on December 30, 1929, but filed in the Clerk's Office only on January 2, 1930.

In further relation to that trial, I may say:

During the summer of 1929, Mr. H. H. Martin had
1181 called on me at New York and had mentioned to me the fact that these two Crossman & Sielcken Memorials were two of the large matters pending before the Commission and that they were very anxious to get that work advanced and completed, and that it was impossible to do it until the present case was tried and determined in this Court.

In answer to that suggestion, and on the same day, I went, with Mr. Barnes, to see Judge Knox of this Court to see if some arrangement could not be made to bring this case up promptly for trial, so as to expedite the work of the Mixed Claims Commission, and told him
1182 that we were bringing this up at the request of the American Agency. Judge Knox said he would be very glad to accommodate the Commission as far as possible and suggested that we see if perhaps Judge Caffey could try the case.

Mr. Barnes then communicated with the office of the United States District Attorney to inquire if it would be agreeable to them to try the case on a date to be fixed by Judge Caffey, if it would also be agreeable to Mr. Hays, counsel for Z.E.G. An agreement was reached with the U. S. Attorney's Office in New York, with Mr. Rhodes, as Assistant Attorney-General in Washington, Mr. Hays, Judge Caffey and ourselves that the case would be tried on December 20, 1929, before Judge Caffey, and it came on before him on that day. Most of the uncontested facts in the case had been stipulated between the parties; Mr. John S. Sorenson was sworn as a witness on behalf

of the plaintiffs, and Dr. Arthur Burchard was sworn as a witness on behalf of the defendant Z.E.G.

Some thirty-four exhibits, including stipulations of fact, were introduced by the plaintiffs and five exhibits were introduced by the defendants, and there was also presented a deposition of Dr. Walter Frisch, which had been taken by the defendant Z.E.G., of which a large part was excluded on objection of the plaintiffs on the grounds of incompetency and irrelevancy and hearsay.

The trial was concluded on the 21st day of December, 1929, and the case was decided from the bench. 1184

The bill of complaint in this cause set up the fact that John S. Sorenson resided in the Eastern District of New York and Thorleif S. B. Nielsen in the Northern District of New Jersey, and that the residence of the partnership of Crossman & Sielcken, of which they were the sole surviving partners, had always been in the Southern District of New York. These facts were undisputed, and no objection was raised by any party on the ground that the Southern District of New York was not the proper district in which to maintain the suit.

Nevertheless, on the trial, the evidence of these facts was elicited orally directly from Mr. Sorenson, and 1185
neither the Court nor any party suggested that the Southern District of New York was not the proper district. All three of the defendants had answered generally on the merits without raising any such question.

The main issue on which the trial centered was the construction of the contract between the Reichseinkauf and Crossman & Sielcken as to whether the loss of the cargoes was one that should be borne by Crossman & Sielcken or by Z.E.G., as successor to the Reichseinkauf. This question was carefully argued on the unquestioned facts and decided in favor of the plaintiffs.

Shortly after the entry of the judgment in the suit arrangements were made for a meeting in Washington at the offices of the Mixed Claims Commission of the attorneys for all the parties concerned in both Memorials and in the present suit, together with the German and American Agents and their counsel.

That meeting occurred on January 9, 1930, and the question of settlement was then definitely taken up. There were present at that conference the gentlemen named in the memorandum of that conference prepared by Mr. Martin, which appears on pages 15, 16, 17 and 18 of the affidavit of Mr. Sterck in the moving papers.

That memorandum is quite full and complete as to all features of the conference except two, and except for those two features deponent cannot at this time give any more accurate or definite statement of what occurred
1187 at that conference than is contained in those minutes of Mr. Martin's, which minutes deponent says are correct and complete to the best of his recollection, except for the two features about to be specified.

At that meeting the terms of settlement of the indemnity agreement, the amount to be paid, and how it was to be paid were all gone into in detail. Mr. Martin, however, took the position, indicated in his minutes, that neither the American Agency nor the Mixed Claims Commission had any interest in any compromise reached of the Z.E.G. claim for indemnity from the German Executors against them; that that was a claim which was
1188 made by a German against Germans under a contract made in Germany during the war and in no way came within the jurisdiction of the Commission or the American Agency, and that it was an independent outside claim wholly beyond the jurisdiction of the Commission.

Mr. Martin sent deponent a copy of these minutes on January 14, 1930. Deponent on January 16, 1930, in acknowledging the receipt of a copy of that memorandum, added:

"Your memo appears complete except that it does not include the tentative negotiations for settling the indemnity given by Sielcken's German executors to Z. E. G.

"Probably this was intentionally omitted by you as the Z.E.G. indemnity is, I suppose, strictly a matter to be considered and disposed of outside the purlieus of the Commission."

And on the 20th of January, 1930, Mr. Martin wrote deponent as follows:

"Dear Mr. Avery:

Receipt is acknowledged of your letter of the 16th instant, acknowledging my letter of the 14th, enclosing an informal memorandum covering the conference at Washington on the 9th instant in relation to the Crossman-Sielcken claims, Docket Nos. 8304 and 8305.

I purposely did not go into the proposed settlement between the Sielcken Estate and the ZEG of the so-called 1190
indemnity agreement other than passing reference thereto as found at pages 3 and 5 of my memorandum, for the reason that this is a matter that does not appear to particularly concern either the American or German Agencies.

Very truly yours,

H. H. MARTIN,
Counsel."

HHM:CMR

The other matter was called to Mr. Martin's attention by my associate, Mr. Doyle, and on January 16, 1930, Mr. Martin wrote to Mr. Doyle in regard to that memo- 1191
randum of the meeting of January 9, as follows:

"I recall that the German Agent said something about the impossibility on his part to secure a release from the firm of Theodor Wille of possible claims this firm may have. The point I wanted to make in my memorandum is that in so far as the two Agencies are concerned if the compromise agreement goes through, it will cover a complete settlement of those two claims in so far as they may be settled in the Commission."

Mr. Doyle advised deponent of this, writing him on February 4, 1930, as follows:

"The only information that Mr. Martin has is a word that von Lewinski let drop to Mr. Bonynge that the German For gn Office is having trouble with Theodor Wille in the matter of this settlement. Mr. Martin does

not know what phase of the matter they have taken up with Theodor Wille, but apparently there is some question being raised and perhaps the matter has been instituted by Wille.

"Do you suppose that Theodor Wille is enlisting the services of some American counsel in contemplating taking a part in this settlement?"

Deponent in reply then wrote to Mr. Doyle that the trouble seemed to be entirely between Germans without any effort being made to assert any claim by Wille
1193 against Crossman & Sielcken; that deponent had heard of no trace of Wille taking any interest in New York in what was going on, and that deponent had asked von Lewinski if the German Agency had heard of any claim by Wille against Crossman & Sielcken and von Lewinski stated that he had not.

About that time also deponent inquired of Mr. Hays whether he represented Wille and Mr. Hays replied that he did not but that he *might* be retained by Wille.

Deponent then asked Mr. Hays what claim Wille made, or threatened to make, and Mr. Hays was very indefinite about it, and never made an attempt to or did give any
1194 explanation of the nature of any claim that was made by or might exist in favor of Theodor Wille.

On or about the 9th of February, 1930, on continued reports that Dr. von Lewinski was having trouble in getting the release from Wille; negotiations were begun between deponent and Mr. Hays, or his associate, Mr. Abramson, with regard to the creation of a joint fund of $200,000 to be contributed one-half by Z.E.G. and one-half by the plaintiffs in this suit, and to be held in New York, to fight any claim that Wille might advance, and if Wille recovered anything to pay the sum recovered, returning the unexpended balance pro rata to the contributors. Shortly afterwards, about the month of March, Mr. Hays' office informed deponent that the Wille firm had agreed to sign the releases and join in the settlement as arranged, if they were paid the sum of $100,000 and that Z.E.G. would contribute $50,000 of that sum

if the plaintiffs would contribute the other $50,000. That was discussed among the counsel for plaintiffs and for Mrs. Sielcken and with the Trust Company.

No explanation whatsoever was vouchsafed to us as to the nature of this threatened claim and we never have known the nature of the claim Wille was threatening to make.

The terms of settlement agreed on, however, were very much more favorable than we had been authorized to accept and the proffer of Z.E.G. to contribute one-half of the $100,000 to Wille showed that Z.E.G. was also anxious 1196
to conclude the settlement. Wille at this time was, through the German Agent, making efforts to cut down the amount of the award to be made under the Wille Memorial and it was, as we saw it, merely another effort on Wille's part to get a reduction, indirectly, of the amount to be awarded against them under that Memorial, which, of course, had nothing to do with the Z.E.G. claim but was entirely independent.

After some discussion of that question, on March 10, 1930, I wrote to Mr. Bonynge, the American Agent, as follows:

"It has occurred to both Mr. Hays and ourselves 1197
that a complete settlement with Wille might be reached for the sum of $100,000 which we would share. If this were done the necessity would be obviated of making the deposit of $200,000. We are inclined to recommend such a proposal for settlement with Wille to our client, if it meets with your approval.

"Would it not be well to discuss the matter with you and Mr. Martin at an early date at the Commission; and we might also discuss the subject further with Mr. Hays and Dr. von Lewinski. On the other hand, it might be well to defer any discussion until we hear from Germany on the settlement proposed, but, at any rate I thought we should acquaint you with the subject matter of our discussions."

Mr. Bonynge, on March 11, 1930, replied to the above letter of March 10, saying, in part, as follows:

"The Agency is in no way concerned with any claims of the firm of Theodor Wille of Hamburg. Therefore I have no comments to make in reference thereto."

During the conference on March 17th, at which both Mr. Bonynge and Mr. Martin were present (of which Mr. Martin has made minutes), Mr. Bonynge suggested that the meeting suspend and he and Dr. von Lewinski with-
1199 drew for several minutes and then Mr. Bonynge came and said that Dr. von Lewinski would like to have a short conference with me. I asked Mr. Doyle (who was fully acquainted with all the details) to go with me, and we went into another room along with Dr. von Lewinski, Dr. Roth, Mr. Hays and Mr. Abramson. They then brought up the subject of this demand of $100,000 by Wille, concerning which I had written Mr. Bonynge on March 10th, 1930, and concerning which Mr. Bonynge had replied to me, as above, on March 11th, 1930.

Mr. Hays stated that it was going to cost $100,000 to get Wille's releases, and asked would we contribute
1200 $50,000 of that amount to enable him to do so. We then agreed that we would recommend it to our clients, and said we would agree to it, subject to approval of our clients.

We then returned to the conference room and told Mr. Barnes and Mr. Alger what had occurred. We then all consented to the settlement, as shown in Mr. Martin's minutes, and the meeting adjourned.

While the $200,000 proposition was still under discussion, Dr. von Lewinski requested me to call on him at his office in the German Agency in Washington, which I did. The message came to me through Mr. Martin. I said to Mr. Martin: "What shall I do?" He said: "It is unusual for the German Agent to have personal conferences with counsel for claimants whom the American Agent represent except through the Agency, but in view of your previous personal contact with Dr. von Lewinski

in Berlin in 1928, I think it is all right, and you had bet- 1201
ter go and see him," which I did.

Dr. von Lewinski took pains then to explain to me that this assertion of an uncertain claim by Wille, of the nature of which he had no knowledge (but probably to be asserted in Germany against the Sielcken estate there) was a thing of which he had no knowledge, and to which he was not a party; that it was as distasteful to him as it could be to me, but it was a real difficulty, and some solution must be had of it in order to enable the general settlement to go through. He disclaimed having any personal interest in the affair and his only official interest in it was in getting these things cleaned up 1202
and out of the way of the other business of the Commission. He added that this alleged claim of Wille's was not before the Commission in any way.

On the 14th of March, 1930, as I recall it, Dr. von Lewinski was in New York, and at his request I called on him at the office of Mr. Hays and in his presence Mr. Hays dictated the following telegram, which I was requested by Dr. von Lewinski to send over my own name to Mr. Bonynge, the American Agent, which I sent:

"Hon. Robert W. Bonynge,
American Agent,
German Mixed Claims Commission, 1203
Investment Building,
Washington, D. C.

"Dr. von Lewinski transmits through Z.E.G.'s New York lawyer, Mr. Hays, request for meeting Washington, Monday morning, March 17th Stop Modifications of tentative settlement made January 9th are suggested, which include settlement with Theodor Wille Stop Mr. Hays and myself will reach Washington Monday morning unless you wire to the contrary.

BRAINARD AVERY."

At the same time, I telegraphed Mr. Doyle, who was in New Hampshire, of the meeting and we all attended the meeting on March 17th, 1930, as so arranged.

Before we went into conference at Mr. Bonynge's office, at 2:30 on March 17th, Mr. Barnes, Judge Hamel, Mr. Alger, Mr. Doyle and myself had all agreed that it would be wise, if getting the settlement through turned on it, to contribute $50,000 to Mr. Hays of the fund of $100,000, which Hays said he needed to secure the Wille releases.

1205 In view of this threat of Wille to assert against Sielcken's assets in Germany some undisclosed claim or claims, we were absolutely insistent on having releases from Wille that would cover every possible claim that that firm could think of asserting.

I am further informed by Mr. Martin, and believe, that on March 18, 1930, in remitting a copy of his memorandum of the meeting of March 17, 1930, to Mr. Bonynge, Mr. Martin wrote:

"I explained to the parties that the questions of claims that the firm of Theodor Wille might possibly have against Crossman & Sielcken was of no more concern
1206 to the Agency than is the question of the possible claims arising out of the so-called indemnity agreement involved in the Z.E.G. claim and that the Agency was not directly concerned with either of these matters."

I recall Mr. Martin's having so stated at that conference.

Prior to the meeting of March 17th, 1930, and I think at Mr. Hays' office, on March 14th, 1930, a discussion ensued in the course of which it was stated by or on behalf of Mr. Hays that he could secure the execution of the desired release from Wille at a cost of $100,000. We have never known what claim Wille thought of asserting.

About that time Mr. Barnes, Mr. Doyle and I were of the impression, which we then expressed to each other, that this application for $100,000 was in the nature of a "hold-up."

At that time, the German Agency and Z.E.G. and their counsel and Mrs. Sielcken Schwarz and Sorenson and Nielsen and their counsel were anxious to see the settlement go through and the enormous and doubtful litigation that might ensue gotten rid of.

I explained to Mr. Bonynge, the American Agent, personally, this demand for $100,000 and our ignorance of what it was for, but that it seemed to me that it was worthwhile to contribute $50,000 to Mr. Hays, if Z.E.G. would, to see the settlement go through, even without knowing on what ground the claim was made, and that 1208
the settlement, with that $50,000 deducted, would still be within the authority to settle conferred on us by Mrs. Sielcken Schwarz. Mr. Bonynge adhered to the position shown in his letter of March 11th, 1930.

For the above reasons, on behalf of the Memorialists, we consented to the arrangement that $50,000 would be contributed by Crossman & Sielcken in Liquidation to Mr. Hays, if Z.E.G. would contribute an equal amount to him to cover the payment demanded in the name of Theodor Wille as a condition of their executing the release called for from it.

We consulted with Mrs. Sielcken Schwarz as to the ad- 1209
visability of making this payment of $50,000 in order to get the settlement through, and she was of opinion that it was satisfactory to do so and authorized us as far as she was concerned to join in that stipulation.

We then took the matter up with the American executor and upon receiving the consent of Mrs. Sielcken to its doing so, it agreed to that modification of the agreement, to wit, the payment out of the recovery, to Hays for Wille of $50,000 on condition that Z.E.G. would make an equal payment to Theodor Wille.

Just about the same time Dr. von Lewinski reported that the German Foreign Office refused to agree to the 60% proposition as to the Wille award and insisted that it be 50% only. We took that question up in the same way with like result, and then came the meeting of March 17, 1930, at which these latter features were discussed

and set out in the minutes Mr. Martin made of that conference.

We insisted we must have a release from Wille that would cover any possible claim that Wille might assert with regard to the cargoes, or any account. They had repeatedly disclaimed having any such claim, and had asserted that all these matters had been fuly adjusted between them and the firm.

We did not, in the face of their threat to take action, feel willing to rely on anything but a specific release of
1211 any such question, even though Wille had not advanced any definite claim, but we made our demand that the release should be made in such form as to protect the firm and the American Executor and the estate of Sielcken from any possible claim that might be made by Wille. In view of Wille's attitude in the matter we did not trust them and felt in duty bound to make the settlement conclusive.

Even after Wille's agreeing to the settlement, we had much difficulty in getting the releases. We sent over to them proper releases for them to execute, but they changed them so as to leave loopholes and we refused
1212 to accept the altered papers and sent back again the papers we had drafted and insisted that they be executed as drafted by us. They were finally executed.

We have never heard nor been informed in any way what the claim Wille proposed to make was, except the assertion in the most general terms, that if they did not get that $100,000 they were going to start litigation which would be embarrassing to the estate of Sielcken; whether that in Germany or that here they did not say.

No claim was ever made by Theodor Wille that they were entitled to any part of the recovery from Z.E.G. under the judgment herein, but only that they wanted $100,000 to be paid them, half by the plaintiffs and half by Z.E.G.

Although Dr. von Lewinski and ourselves regarded this demand as in the nature of a holdup, we finally agreed to it because the general settlement was so advantageous that we could better afford it than to go on litigating.

The claim presented by the Memorial against Theodor Wille was itself one of very great difficulty. There was first the question whether the bulk of the bonds for which recovery was asked were individual assets of Hermann Sielcken or firm assets of Crossman & Sielcken.

There was next the very serious question whether the bulk of the bonds had ever been purchased or the transaction simply "bucketed" by them, and they had refused to allow an inspection of their books by any accountants of our selection.

There were also very difficult questions as to rates 1214
of exchange to be adopted and of dates from which interest would run.

It was also somewhat uncertain how far the refusal of Wille to turn over the bonds had been compelled by Germany under the special war legislation and how far it had been the individual action of Theodor Wille.

Mr. Sielcken's accounts in Germany had been kept in a most tangled shape and it would have been a matter of prolonged and difficult litigation of uncertain outcome, and we believed the settlement in the shape it finally took most advantageous to the estate.

None of us had at any time any thought of arranging 1215
to get money out of the Treasury of the United States or from the Alien Property Custodian on the basis of getting a consent recovery in this suit on the basis of dividing up the proceeds with Germans. What we were compromising with Z. E. G. was simply the outside claim under the indemnity agreement that had been signed by the German executors, a claim which we regarded most seriously despite the opinion of Dr. Neumann, a copy of which is hereto annexed, marked Exhibit C.

It is our belief that neither Mr. Martin nor Mr. Rhodes have ever felt that there was any disposition shown on our part at any point to withhold from them the fullest information with regard to what was being done as to the compromise of the whole affair. That we were making a settlement they both knew, and, in view of the nature of the claims which we were compromising, they both, as we

understood it, felt that the matter of the compromise we should reach was a matter with which they were not really concerned, but which was the private affair of the firm in liquidation and the estate of Sielcken, which the parties were at liberty to settle in any way on terms that they approved.

At the time the settlement was made, the estate had no ready cash with which to carry out the settlement and for that reason the funds coming in under the judgment were used in making the compromise instead of delaying
1217 until other funds came in, as they did some six weeks later.

The settlement was carried through as arranged in the letter of March 27th, 1930, from Mr. Barnes and myself to Arthur Garfield Hays, Exhibit W of the affidavit of Mr. Sterck, and as shown in the pending account of the executor in the Surrogate's Court for New York County.

Deponent further says that Mr. Sterck, who makes the moving affidavit herein, was entirely unknown to deponent throughout the prosecution of said claims and negotiations for settlement, nor did deponent ever hear of him until the presentation of his affidavit herein. It is depo-
1218 nent's belief that Mr. Sterck has no personal knowledge of any of the matters stated in his affidavit beyond his having found in the files of the Department of Justice copies of some papers which he annexed to his affidavit. These do not support, even unexplained, the conclusions he advances therefrom; and his conclusions are entirely contrary to other documents in the possession of the Department of Justice or readily accessible to it, with which apparently Mr. Sterck had not familiarized himself.

Deponent further says that Mr. George W. Alger (who has been above referred to) was at deponent's place in Vermont some days in July, 1938, and deponent then discussed with him the matter of his making affidavit as to the integrity of the proceedings in the final settlement of the recoveries in this suit and before the Mixed Claims Commission and of the claim of Z. E. G. under its indemnity agreement and the demand of $50,000 for pay-

ment to Theodor Wille for the desired releases, which Mr. Alger said he would be willing to do.

Mr. Alger returned to New York toward the end of July with the understanding that an affidavit satisfactory to him would be prepared and verified by him.

On August 1st, 1938, deponent unexpectedly received from Mr. Alger a note from the steamer "Vulcania," saying:

"This is a surprise. I made up my mind Thursday night when I did not sleep that I should take a trip. 1220
Friday morning I got the last available accommodation on this boat and return on the 'Savoia' about September 1st."

I wrote Mr. Bacon on the first of August, 1938, of my receiving this word, but it was then too late to secure any affidavit from Mr. Alger before August 15th, 1938.

The steamship "Vulcania" had sailed on July 30th, 1938, from New York for the Azores, French Morocco, Gibraltar, Malta, etc., and it was quite impossible to secure any affidavit from Mr. Alger by the 15th instant.

In view of the fact that suggestions are made in the moving affidavit intimating the possibility of bad faith 1221
on the part of counsel representing the plaintiffs in this suit, and Mr. Barnes being dead some years before any such aspersions had been suggested, deponent has thought it only proper that the affidavits of other counsel who were active in the case should be presented in answer to these imputations, and desires that opportunity be afforded to file and serve Mr. Alger's affidavit promptly after his return to this country in September.

The high character and standing of Mr. Barnes was well known to this court and it is my belief that the Court will not lightly accept any challenge of his good faith on the mere inference of any person who had no personal knowledge of the proceedings, and only a very limited knowledge of the documents to which he could readily have had access.

1222 *Exhibit A Annexed to Answering Affidavit of Brainard Avery*

It is for this reason that deponent has presented the foregoing facts and documents as evidence of the real facts of the settlement made.

BRAINARD AVERY.

Subscribed and sworn to before me this
11th day of August, 1938.
James S. Ogsbury, Jr.,
Notary Public,
1223 Nassau Co., N. Y. No. 1870.
Certificate filed in N. Y. Co., No. 180.
N. Y. County Register's No. 0-O-105.
My commission expires March 30, 1940.
(Seal)

Exhibit A Annexed to Answering Affidavit of Brainard Avery.

Alex W. Sielcken
Hoepfner & Sielcken, Ltd.
New York
1224

87 Front Street
May 10th, 1927

Messrs. Barnes, Avery & Whiting,
100 Broadway,
New York City.

Dear Sirs:

I want to refer to your letters of April 2nd, April 6th and May 5th respectively.

In consideration of your examining, filing and prosecuting certain claims (Prize Court cases, Claim for Depreciation of Marks in re Peimann, Ziegler & Co., Wille and the Depreciation of Marks on War Loan Bonds) with the German Mixed Claims Commission and/or any other

Exhibit A Annexed to Answering Affidavit of Brainard Avery 1225

Court or Courts for my account and/or the account of the estate of Herman Sielcken, Dec., I herewith agree to pay you

One Thousand Dollars ($1,000.00) per month for services. This retainer is to include Judge Hamel and Mr. Doyle's firm in Washington, D .C.

It is agreed that this retainer for $1,000—per month shall not run longer than five (5) months and that the total amount paid you under this retainer shall not exceed Five Thousand Dollars ($5,000.—) in total. This 1226
retainer is to include all office expenses, not however including cables and long distance telephones, all other expenses are to be stated monthly.

In case of recovery from the Mixed Claims Commission and/or any other Court or Courts of the claims known as the Prize Court cases, I herewith agree to pay you Twenty (20) per cent of the amount recovered as your fee. In case of recovery in the Peimann Ziegler matter against the Mixed Claims Commission, I herewith agree to pay you twenty-five (25) per cent of the amount recovered. In case of recovery in the action resulting from the depreciation of Marks, which were invested in Ger- 1227
man War Loan Bonds, I agree to pay you twenty (20) per cent of the amount recovered as your fee.

In respect to the above referred to three cases (Prize Court cases, Peimann Ziegler and War Loan Bonds) it is understood that your fee shall only become due you when Germany has finally paid me.

Yours very truly,

CLARA SIELCKEN SCHWARZ,
By ALEX WENDROTH SIELCKEN
Atty.

1228 **Exhibit B Annexed to Answering Affidavit of Brainard Avery.**

(Stempel) No. 198 Anlage A
Zwei M 50Pf.pr.2 Expl.
den 3.Jan. 1918
gez. Unterschrift.

SCHIEDSVERTRAG.

Zwischen der Firma Crossmann & Sielcken, New York, und der Zentral-Einkaufsgesellschaft, Berlin, bestehen
1229 Differenzen über die Abwickelung von Geschäften, die auf Grund der zwischen den Parteien in September/Oktober 1914 getroffenen Abmachungen zur Aus führung gelangt sind. Es handelt sich um die Abladungen, die von der Firma Crossmann & Sielcken mit den Dampfern "United States," "Arkanoas," "Hellig Olav," "Oscar II," "Indianic," "Hilding," "Gunborg" in März/April 1915 von New York nach Kopenhagen für die Z. E. G. gemacht sind. Bezüglich dieser Ladungen, von welchen die ersten 4 im Kopenhagen angekommen waren, aber wieder nach England zurückgefördert worden sind und von welchen die letzten 3 in England beschlagnahmt sind, streiten die
1230 Parteien darüber, wer die Gefahr der Reise zu tragen hat, und ob demgemäss diese Sendungen vonder Z. E. G. zu bezahlen sind oder nicht.

Es ist vereinbart, diese Meinungsverschiedenheiten durch ein Schiedsgericht entscheiden zu lassen. Jede Partei ernennt einen Schiedsrichter; zum 3. Schiedsrichter und Obmann wird der Reichsgerichtsrat Herr. Dr. F. Philippi bestellt. Für alle etwa erforderlich werdenden gerichtlichen Handlungen soll das Landgericht in Hamburg ausschliesslich zuständig sein.

Es ist vereinbart, dass nur je eine der direkt nach England aufgebrachten und der zunächst nach Dänemark gelangten, aber von dort nach England zurückgeschickten Dampferladungen Prozessgegenstand sein soll, mit der Massgabe, dass die Parteien die Entscheidung des Schiedsgerichts auch für die übrigen oben genannten Dampferladungen als verbindlich anerkennen.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1231

Die Z. E. G. soll als Kläger in auftreten und ihre Ansprüche im Wege der Feststellungsklage geltend machen. Die Klage ist gegen Hermann Sielcken Nachlass, vertreten durch die Testamentsvollstrecker, die Herren G. Diederichsen, G. Georgius, Carl Isenberg und Richard Isenberg, zu richten.

Berlin, den 27. Dezember 1917
Zentral-Einkaufsgesellschaft
mit beschränkter Haftung.
gez. Unterschrift
gez. Unterschrift 1232

Hamburg, den
31.Dec.1917.

gez. D. A. Kaemmerer
i.V.der Testamentsvollstrecker
von Herm. Sielcken Testament.

Die Richtigkeit der vorstehenden Abschrift wird beglaubigt.

(Signature.)

Berlin, den 16.Januar 1928. (Seal) 1233
Assessor.

1234 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

Translation.

(Stamp) No. 198
2M 50 Pf.pr.2 Expl.
Jan.3,1918
sgd. Signature.

CONTRACT OF ARBITRATION

1235 Between the firm of Crossman & Sielcken, New York, and the Central Purchasing Corporation, Berlin, there exist differences concerning the winding up of transactions which were carried out under an agreement between the parties arrived at in September/October, 1914. The matter has to do with shipments from New York to Copenhagen, which the firm of Crossman & Sielcken arranged for the Z. E. G. in March/April, 1915, with the steamers "United States," "Arkansas," "Hellig Olav," "Oscar II," "Indianic," "Hilding," "Gunborg." Concerning these shipments, of which the first four arrived in Copenhagen but were returned to England and the
1236 last three were seized in England, the parties are in dispute as to who shall bear the risk of the voyage and whether or not these shipments are to be paid for by the Z. E. G.

It has been agreed that these disputes shall be decided by a court of arbitration. Each party shall appoint an arbiter; Reichsgerichtsrat Dr. F. Philippi is appointed as 3. arbiter and chairman. The District Court at Hamburg shall have exclusive jurisdiction for all court actions which may become necessary.

It has been agreed that only one of the shipments captured and brought directly to England and one brought to Denmark but later returned to England, shall be submitted to the court of arbitration, with the provision that the parties will recognize the decision of the court of arbitration as binding for the other above mentioned shipments.

The Z. E. G. shall be plaintiff and bring suit for the

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1237

establishment of its rights. The suit shall be directed against the estate of Hermann Sielcken, represented by the executors; Messrs. G. Diederichsen, G. Georgius, Carl Isenberg, and Richard Isenberg.

Berlin, December 27, 1917

Central Purchasing Corporation
with limited liability

(Zentral-Einkaufsgesellschaft
mit beschraenkter Haftung) 1238

Sgd. Signature

Sgd. Signature

Hamburg,
Dec.31,1917.

Sgd. D. A. Kaemmerer

For the executors of the
Estate of Herm. Sielcken.

The correctness of the above copy is certified.
Berlin, January 16, 1928 (Seal) Signature 1239
Assessor.

Anlage B

16. Januar 1918.

Da. Rechtsabteilung.
Dr. G. M. Ste.

Herrn Rechtsanwalt Dr. Kaemmerer,

Hamburg
Alter Wall 20.

In Sachen gegen *Sielcken Nachlass* erwidern wir auf Ihr gefälliges Schreiben vom 14. ds. Mts:

Wir haben keine Veranlassung, eine Entscheidung über die Ihrer Ansicht nach für uns ungünstiger als bei der

1240 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

Ladung des Dampfers "Hellig Olav" liegende Frage betreffend Dampfer "United States" für sämtliche von Dänemark nach England zurückgebrachten Ladungen als massgebend anzuerkennen.

Wir können auch Ihre Ansicht nicht teilen, dass der Schiedsvertrag hinfällig ist, weil wir die Klage betreffend eine andere als die von Ihnen gewünschte Ladung erhoben haben. Aber wir wollen Ihren Klienten die Geltendmachung ihrer Rechte nicht aus einem formellen Grunde beschränken und werden die Klage auch auf die Ladung des Dampfers "United States" ausdehnen, wenn zwischen uns Uebereinstimmung darüber erzielt wird, in welchem Umfange der Schiedsspruch für die übrigen nicht der Klage zugrundegelegten Dampferladungen präjudiziell sein soll.

1241

Wir sehen Ihren Vorschlägen hierüber entgegen.

Wir regen an, dass der Schiedsspruch, seine tatsächlichen Feststellungen und seine Begründung auch für die Meinungsverschiedenheiten über die dem Schiedsgericht nicht unterbreiteten Ladungen massgebend sein sollen mit der alleinigen Ausnahme, dass es jeder Partei freisteht, bezüglich dieser Ladungen geltend zu machen, dass besondere von dem dem Schiedsgericht unterbreiteten Tatbestand abweichende Tatbestände vorliegen, welche eine andere entzcheidung rechtfertigen. Die von dem Schiedsgericht etwa festgestellten Grundsätze und die Auslegung dieses Abkommens vom 25.September würden aber in einem späteren Verfahren nicht mehr bemängelt werden dürfen.

1242

Ferner müssten Streitigkeiten über die jenigen Ladungen, welche nicht Gegenstand der jetzigen (durch Mitberücksichtigung der Ladung des Dampfers "United States" zu ergänzenden) Klage sind, von demselben Schiedsgericht entschieden werden, wie das jetzt berufene.

Zentral-Einkaufsgesellschaft
mit beschränkter Haftung
gez: Dr.G.Melchior gez: Vorwerk

Die Richtigkeit der vorstehenden Abschrift wird beglaubigt.

Berlin, den 16. Januar 1928. (Seal) Signature

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1243

Translation

January 16, 1918.

Law Department
Dr. G.M.Ste.

Dr. Kaemmerer, Attorney,

Hamburg 1244
Alter Wall 20.

In the matter against the *Sielcken Estate* we reply as follows to your kind letter of the 14th inst.:

We have no reason to recognize as conclusive for all shipments returned to England from Denmark a decision concerning the steamer "United States" which, in your opinion, is more unfavorable for us than that concerning the shipment of the steamer "Hellig Olav."

We are also unable to share your view that the contract of arbitration is void because we brought suit on a shipment other than the one desired by you. But we do not wish to restrict the rights of your client by a formal argument and we will bring suit also against the steamer "United States" if we can reach an agreement as to what extent the arbitration shall be decisive as precedent for the remaining shipments not included in the law suit. 1245

We await your proposals in this matter.

We suggest that the arbitral decision, its statements as to the facts, and its grounds, shall also be binding with regard to the disputes concerning the shipments not included in the law suit, with the sole exception that it is within the discretion of each party to claim in connection with these shipments that there existed peculiar circumstances differing from those submitted to the arbiter, which justify another decision. The principles which may be established by the court of arbitration and the interpretation of this agreement of September 25th cannot be contested in a later proceeding.

1246 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

Furthermore, disputes concerning the shipments which are not the subject of the instant claim (which will be supplemented by including the shipment of the steamer "United States") shall be decided by the same court of arbitration as that now acting.

Zentral-Einkaufsgesellschaft
mit Beschraenkter Haftung
(Central Purchasing Corporation
with limited liability)

1247

Sgd.: Dr. G. Melchior Sgd.: Vorwerk

The correctness of the above copy is certified.

Berlin, January 16, 1928 (Seal) Signature
Assessor.

Anlage C

Dres. Behn Kaemmerer Baur
1248 Rechtsanwälte
Dr. Max G. A. Predöhl
Rechtsanwalt

Hamburg 11, den 20. Januar 1918.
Alter Wall 20 II

Zentral-Einkaufsgesellschaft m. b. H.
Zentralabteilung,

Berlin W.8.
Behrenstr. 21.

Im Besitze Ihres geehrten Schreibens vom 16.ds. zur Sache Sielcken Nachlass bedaure ich nicht anerkennen zu können, dass Sie in der Lage sein würden meinen Klienten die Geltendmachung ihrer Recht aus formellen Gründen zu beschränken. Im übrigen bin ich aber mit dem Inhalt

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1249

Ihres Schreibens und Ihrer Anregung betr. der Beschränkung der Massgeblichkeit des Schiedsspruchs, so wie Sie es formuliert haben, durchaus einverstanden, sodass es eines besonderen Vorschlags hierüber meinerseits nicht bedarf.

Auf Grund dieser hiermit erzielten Verständigung können Sie meiner Ansicht nach die Klage unbedenklich auf die Ladung der D. "United States" beschränken, wenn Sie dadurch eine wesentliche Kostenersparnis zu erzielen glauben. Ich bin aber auch damit einverstanden, 1250
dass beide Ladungen per D. "United States" und per D. "Hellig Olav" in die Klage aufgenommen werden.

Ich bitte Sie freundlichst, mir die demgemäss abgeänderte Klagschrift wieder zukommen zu lassen. Von dem Obmann habe ich ein Schreiben erhalten, nach welchem ich die Klagbeantwortung bis 9.Februar einreichen soll und werde ich, wenn es mir möglich ist, diese Frist einhalten.

Hochachtungsvoll
Dres BEHN KAEMMERER BAUR.
gez. Kaemmerer

1251

1252 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

Translation

2/12

Dres. Behn Kaemmerer Baur
Attorneys at Law

Dr. Max G. A. Predoehl
Attorney at Law

Hamburg 11, January 20, 1918,
Alter Wall 20 II.

1253 Zentral-Einkaufsgesellschaft m. b. H.
Central Department,

Berlin W.8.

Behrenstr. 21.

I am in receipt of your favor of the 16th inst. Concerning the matter of the Sielcken Estate, I regret not to be able to recognize that you would be in a position to limit the claim of my clients on account of formal reasons. But otherwise I agree with the contents of your letter and your suggestion concerning the limitation of
1254 the competence of the arbitration, so that another proposition in this respect on my part is unnecessary.

On account of this agreement reached by us, you may, in my opinion, limit the law suit without hesitation to the shipment of the steamer "United States" if you think that considerable expense will thereby be saved. However, I also agree that both shipments of the steamers "United States" and "Hellig Olav" be included in the law suit.

I request you kindly to return the changed writ of complaint. I have received a letter from the chairman, according to which I have until February 9th to file the answer to the writ of complaint, and I shall observe this time limit if possible.

Respectfully

Dres BEHN KAEMMERER BAUR.
Sgd. Kaemmerer.

The correctness of the above copy is certified.

Berlin, January 16, 1928. (Seal) Sgd. Signature
Assessor.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1255

Exhibit a.

(Stempel Abgabe Hamburg)

SCHIEDSSPRUCH.

in Sachen

der Zentral-Einkaufsgesellschaft zu Berlin, vertreten durch die Geschäftsführer: Herrn Dr. Georg Melchior und Herrn Carl Vorwerk,

Klägerin 1256

gegen

die Testamentsvollstrecker des verstorbenen Hermann Sielcken

nämlich die Herren: C. Diedrichsen, G. Georgius, Carl Isenberg und Richard Isenberg,

diese vertreten durch den Rechtsanwalt Herrn Dr. A. Kaemmerer zu Hamburg,

Beklagte.

Das von den Parteien berufene Schiedsgericht bestehend aus: 1257

Senatspräsidenten Dr. F. Philippi,

den Rechtsanwälten: Justizrat Dr. Reimer

und Dr. Kiesselbach,

erlässt folgenden Spruch, der zu Hamburg am 31. Mai 1918 in der gemeinsamen Beratung beschlossen und abgefasst ist:

I. Teilentscheidung:

Es wird festgestellte, dass die Klägerin nicht verpflichtet ist, den Beklagten für die von der Firma Crossman & Sielcken von New-York nach Kopenhagen am 12. April 1915 mit dem Dampfer Gunborg verladenen 500 Kisten Speck und 1500 Kisten Zerealien Zahlung zu leisten.

1258 *Exhibit B Annexed to Answering Affidavit of Leonard Avery*

II. durch Zwischenentscheidung:

Es wird festgestellt, dass die Gefahr der Reise und insbesondere der auf der Reise erfolgten Beschlagnahme der am 11. März 1915 mit dem Dampfer "United States" verladenen 210 Fässer Schmalz und 225 Kisten Speck und der am 31. März 1915 mit dem Dampfer Hellgi Olaf verladenen 500 Kisten Speck die Verkäuferin trifft.

1259 III. Beschluss:

Die Parteien haben weiter aufzuklären:

1. welchen genaueren Inhalt die den Kapitänen oder Redereien der Dampfer hinsichtlich der streitigen Waren von den Engländern aufgelegte Verpflichtung gehabt hat.

2. ob es möglich gewesen wäre eine Auslieferung der Waren in Kopenhagen zu erwirken.

3. was zu diesem Zwecke von beiden Parteien getan ist und aus welchem Grunde ihre Bemühungen erfolglos geblieben sind.

1260 TATBESTAND.

Zwischen dem Reichseinkauf, dessen Nachfolgerin die Klägerin ist, und dem New-Yorker Handelshause Crossman & Sielcken, dessen persön lich haftender Teilhaber der verstorbene Hermann Sielcken war, ist der in dem Briefe des Unterstaatssekretärs Herrn Dr. Richter vom 25. September 1914 bestätigte Vertrag geschlossen worden. Dieser für den Inahlt des Vertrages massgebliche Brief lautet:

"Euer Hochwohlgeboren bestätige ich, dass der Reichseinkauf in Hamburg beauftrag ist, gemichte Ladungen von Weizen, Tee, Kako, Kraftfuttermitteln bis zum Werte von M 600 000.-für jede Schiffsladung die auf neutralen Schiffen von amerikanischen Häfen nach neutralen Häfen der Ostsee abgeladen werden, im Ostseehafen abzunehmen. Der Reichseinkauf wird hierfür den Wert der Ladung cif Ostseehafen (Fakturenwert zuzüglich Fracht und Verzicherungsspesen)

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1261

und 10% Provision von diesem Werte, zahlen. Zahlung erfolgt bei Ankunft der Ware und Auslieferung der Konnossemente im Bestimmungshafen etc."

Auf Grund diesses Abkommens haben Crossman & Sielcken mit einer Anzahl neutraler Dampfer nach neutralen Ostssehäfen vornehmlich nach Kopenhagen, Waren abgeladen, von denen ein Teil glücklich angekommen und von der Klägerin abgenommen, ein anderer Teil von den Engländern aufgebracht oder beschlagnahmt ist. Die 1262
Parteien streiten über die mit den Dampfern "United States," "Hellig Olaf" und "Gunborg" geschehenen Abladungen. Die Konnossemente über diese Waren sind auf Harry Levin zu Kopenhagen ausgestellt, der nach Anweisung der Vertreter von Crossmann & Sielcken mit ihnen zu verfahren hatte.

Die beiden Dampfer United States und Hellig Olaf sind am 11. und 31. März von New-York abgegangen. Die ersten Anzeigen von den mit ihnen erfolgten Abladungen sind der Klägerin bezüglich der United States durch den Brief Anlage 8, d.d. Hamburg, den 28. März, besüglich der Hellig Olaf durch das Telegramm Anlage 16 vom 21. April erstattet worden. Bei-de Dampfer sind auch mit 1263
der Ladung—und zwar am 27. März und 17. April—in Kopenhagen eingetroffen. Sie waren aber auf der Reise von den Engländern angehalten und nur gegen bestimmte Verpflichtungen losgelassen worden. Unsicher ist, ob die Verpflichtung der Reederei dahin gegangen ist, die Ware nach England zurückzubringen, wenn nicht dargetan werde, dass sie in Dänemark verzehrt werde, oder dahin, dass sie schlechthin nach England zurückgebracht werden müsse. Jedenfalls hat die Reederei wegen der eingegangenen Verbindlichkeit die Auslieferung der Waren verweigert. Sie sind schliesslich nach England zurückgebracht und dort kondemniert worden.

Der dritte Dampfer Gunborg ist am 12. April von New-York abgegangen. Die geschehene Abladung ist der Klägerin durch das Telegramm vom 21. April (Anlage 16) angezeigt. Der Dampfer ist von den Engländern genommen und nicht nach Kopenhagen gelangt. Die Ware

1264 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

ist obenso wie die früheren Abladungen kondemniert worden.

Die Parteien streiten darüber, wer den Verlust zu tragen hat.

Die Klägerin beantragt:

festzustellen, dass sie nicht verpflichtet ist, den Beklagten für die von der Firma Crossmann & Sielcken von New-York nach Kopenhagen;

am 11. März 1915 mit dem D. "United States" verlad-
1265 enen 210 Fässer Schmalz und 255 Kisten Speck;

am 31. März 1915 mit dem D. "Hellig Olaf" verladenen 500 Kisten Speck und 1500 Kisten Zerealien, Zahlung zu leisten.

Die Beklagten beantragen, die Klage abzuweisen.

Der Streit ist schriftlich in der Klagschrift nebst Nachtrag, der Klagbeantwortung, Replik und Schriftsatz der Beklagten vom 24. April 1918 verhandelt. Die Klägerin hat weiter mtt Schriftsatz vom 22. April eine Anzahl von Urteilen, Gutachten und anderen Schriftstücken überreicht, welche die dänische Rechtsprechung über die Pflicht der Reedereien zur Auslieferung von Waren, die
1266 von den Engländern so, wie hier im Falle der D. United States und Hellig Olaf geschehen, beschlagnahnt sind, betreffen.

Gemäss der Auflage des Vorsitzenden haben die Parteivertreter sich ferner durch ihre Schriftsätze vom 23. und 28. Mai erklärt.

Schliesslich ist der gesamte Streitstoff in mündlicher Verhandlung erörtert, wobei von der Klägerin noch zwei Briefe Bruhns vom 20. und 18. April 1915, die Rechnung über die mit der United States verladenen Waren und eine Aufstellung über den Weg, den die Konnossemente genommen haben, vorgelegt sind.

Der Anwalt der Beklagten hat darauf hingewiesen, dase es ungewiss sei, ob die Klägerin nicht durch geeignete Massnahmen die Ueberführung der Waren nach England hätte hindern können.

Auf Grund des gesamten Materials hat das Schiedsgericht seinen Spruch gefällt:

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1267

GRUENDE:

I. Zurückzuweisen ist zunächst der Gedanke der Beklagten, dass es sich um eine dem Hause Crossmann & Sielcken von dem Reichseinkauf erteilte Einkaufskommission handelt. Wenn auch der Preis auf den Einstandspreis zuzüglich einer Provision von 10% festgesetzt ist, so ist daraus doch keineswegs zu schliessen, dass Crossmann & Sielcken als Kommissionäre des Reichseinkaufs tätig werden sollten. Wäre dies die Meinung gewesen, so 1268
wäre jedes einzelne von Crossmann & Sielcken im Hinblick auf den streitigen Vertrag geschlossene Geschäft, es wären also die einzelnen Einkäufe, die Fracht-und Lagerverträge in den Vereinigten Staaten schliesslich die Seefrachtverträge von Anfang an für Rechnung des Reischseinkaufs gegangen und hätten unverzüglich angezeigt werden müssen. Der Reichseinkauf hätte auch das Recht gehabt, die für seine Rechnung eingekauften Waren schon in Amerika abzunnehmen. Andererseitz wären Crossmann & Sielcken berechtigt gewesen, dem Reichseinkauf die Waren daselbst sur Verfügung zu stellen, wenn etwa wegen der Kriegsläufte, z.B. Ausfuhr- 1269
verboten, eine Verschiffung vorzeitig unmöglich geworden wäre. An alles dies hat man offenbar nicht gedacht. Vielmehr sollten Crossmann & Sielcken dem Reichseinkauf Waren der verabredeten Art übergeben und ihm das Eigentum daran verschaffen, wogegen sie als Entgelt den Einstandspreis zuzüglich 10% Gewinn erhalten sollten. Es war also Kauf beabsichtigt.

II. Freilich ist lt. der Bestätigung vom 25. September auch kein vollständiger, beiderseits verpflichtender Kauf abgeschlossen worden. Der Reichseinkauf hat sich verpflichtet, Waren der verabredeten Art, die Crossmann & Sielcken ihm auf die festgesetzte Weise liefern würden, abzunehmen und mit einem nach dem vereinbarten Grundsätzen zu berechnenden Preise zu bezahlen. Er hat also ein für längere Zeit verbindliches Kaufangebot gestellt. Crossmann & Sielcken haben sich aber im September 1915 zu nichts verpflichtet. Falls sie es nicht für

1270 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

angezeigt hielten, überhaupt Waren abzuladen, so konnten Sie nach dem Vertrage nicht dazu angehalten werden. Sie waren auch nicht gehindert, an andere europäische Käufer in gleicher Weise wie an den Reichseinkauf zu liefern, durften also Waren der in dem Briefe vom 25. September bezeichneten Art, die sie nach neutralen Ostseehäfen abluden, dritten Personen anbieten und liefern. Erst wenn Sie dem Reichseinkauf anzeigten, dass sie ihm bestimmte Waren auf Grund seines Kaufangebotes liefern
1271 würden, oder bereits für ihn abgeladen hätten, wurde ein Kauf zwischen beiden Teilen perfekt. Daraus folgt, dass keineswegs vor solcher Andienung die Gefahr einer bestimmten Ladung aur die Klägerin übergegangen sein kann. Denn es ist undenkbar, dass der Käufer die Gefahr einer bestimmten Sache zu tragen hätte, bevor überhaupt eine bestimmte Sache bindend bezeichnet ist, die er abzunehmen und die der Käufer zu liefern ver Pflichete wäre.

Bezüglich der Abladung der United States und Hellig Olaf kann hiernach die Gefahr der Reise nicht auf die Klägerin übergegangen sein, wie immer man den Vertrag
1272 vom 25. September auslegen mag. Crossmann & Sielcken hatten die Ware an die Adresse von Harry Levin in Kopenhagen abgeladen. Dieser war ihr Vertreter, nicht der der Klägerin, wenn er ihnen auch von dieser als geeignete Person vorgeschlagen sein mag. Das ergibt sich ganz klar aus den vorgelegten Anlagen 7-9 und 4, wonach Levin die Konnossemente von der Vertreterin der Verkäuferin erhielt, um nach ihrer Anweisung damit zu verfahren und sie in deren Auftrage an den Vertreter der Klägerin, Daniel Bruhn, übergeben hat. Auch der Brief des verstorbenen Herrn Sielcken vom 29. Mai 1915 (Anlage 4) zeigt, dass er Levin als seinen Vertreter behandelt hat. Die Uebersendung der Konnossemente an Levin war demnach keine an die Klägerin gerichtete Andienung der Ware. Diese ist vielmehr bezüglich der Ware der United States der Klägerin zuerst mit dem aus Hamburg datierten Briefe vom 28. März-Anlage 8-zugegangen. Vorher hat Klägerin von dieser Abladung nichts erfahren.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1273

Da der Dampfer schon am 27. März in Kopenhagen eingetroffen war, wusste am 28. März, wenn nicht der Hamburger Vertreter der Verkäuferin, so jedenfalls ihr Kopenhagener Vertreter Levin um die geschehene Beschlagnahme. Die erste Anzeige von der Abladung der Hellig Olaf, die am 17. April in Kopenhagen eingetroffen war, hat die Verkäuferin der Käuferin erst mit dem Telegramm vom 21. April-Anlage 16-erstattet, nachdem der Absender Herr Sielcken zugestandener Massen durch Levin von der Beschlagnahme benachtichtigt war. Die Verkäuferin hat 1274
also beide Partien der Käuferin erst angedient, nachdem die Beschlagnahme nicht nur geschehen, sondern auch den europäischen Vertretern der Käuferin bekannt geworden war. Dies war unberechtigt. Waren, die bereits von einer feindlichen Kriegsmassregel betroffen waren, welche die Gefahr gänzlichen Verlustes sehr nahe brachte und jedenfalls die Käuferin an der freien Verfügung über die Ware hinderte, durfte die Verkäuferin nicht der Käuferin auf deren verbindliches Kaufangebot andienen.

Klägerin wäre also berechtigt gewesen, die Konnossemente und die Ware sofort zurückzuweisen, auch wenn man den Vertrag mit der Beklagten vom 25. September 1275
dahin auszulegen hätte, dass die Käuferin die Gefahr der Reise zu tragen hatte.

III. Zudem musste aber diese Auslegung für unrichtig erachtet werden.

Dass der Reichseinkauf die Absicht und Meinung gehabt hat, nicht auf Abladung von den Vereinigten Staaten, sondern auf Lieferung im Ostseehafen abzuschliessen, ist aus dem Telegramm des Unterstaatsekretärs Richter vom 25. Sept. und dem Bericht des Geheimrats Frisch vom 23. September 1915 mit grosser Wahrscheinlichkeit zu entnehmen. Dies ist zwar nicht entscheidend, weil es sich um interne Aeusserungen im Kreise der Käuferin handelt, nur wenn, wie behauptet ist, Herr Ballin das genannte Telegramm seinem ganzen Inhalte nach Herrn Sielcken mitgeteilt haben sollte, würde hierauf Gewicht zu legen sein. Abgesehen hiervon ist nur der Inhalt des Bestätigungsbriefes entscheidend, wie er nach seiner Wortfas-

1276 *Exhibit B Annexed to Answering Affidavit of Brainard Avery.*

sung, dem Umständen des Falles und dem Wesen der ganzen wirtschaftlichen Transaktion verstanden werden muss.

Allerdings war die Verkäuferin ein zu New-York ansässiges Handelshaus und sie hatte folglich daselbst zu erfüllen, wenn ein anderer Ort weder von den Parteien für die Lastung bestimmt war, noch aus den Umständen zu entnehmen war.

Das Schiedsgericht hat aber unter Berücksichtigung
1277 aller Umstände den Bestätigungsbrief dahin verstehen Müssen, dass die Lieferung abseiten der Verkäuferin im Bestimmungshafen geschehen sollte.

Zunächst fällt die Höhe der bedungenen Provision für keine Seite ins Gewicht. Allerdings hatte der Reichseinkauf der Verkäuferin eine Provision von 10%, vielleicht auch bei Lieferung ab New-York zugestehen können, weil es für ihn von Vorteil war, mit einem zuverlässigen und potenten Hause, dem auch alle Gelegenheiten zu günstigem Einkaufe offenstanden, abzuschliessen. Andererseits können Crossmann & Sielcken auch sehr wohl bie Lieferung in Kopenhagen mit einem Zwischengewinne von 10%
1278 zufireden gewesen sein. Es ist dabei zu berücksichtigen, dass der Abschluss im Sommer 1914, also im Anfang des Krieges erfolgt ist und die Gefahr des Transportes damals vielleicht von ihr nicht sehr hoch eingeschätzt wurde, zumal sie sich durch die Kriegsversicherung, deren Kosten ihr erstattet werden sollten, genügend gedeckt erachtet haben mag. Jedenfalls konnte der Reichseinkauf aus der Höhe der Provision nicht schliessen, dass die Verkäuferin nur in New-York liefern und die Gefahr der Reise nicht tragen wollte. Die Höhe der Provision ist also für die Entscheidung unerheblich.

Ohne Grund berufen sich ferner die Beklagten für ihre Auslegung auf den Gebrauch der Abkürzung cif. Wird im typischen Abladegeschäft der Preis unter Verwendung der sog. Cif-Klausel bestimmt, so wird damit bedungen, dass gegen den in bestimmter Summe festgesetzten Kaufpreis der Verkäufer nicht nur die Ware zu liefern, sondern neben dieser hauptsächlichen Leistung noch die

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Kosten der Versicherung und der Fracht bis zum Bestimmungshafen zu tragen hat. Dies weist allerdings darauf hin, dass der Verkäufer seine Lieferpflicht schon im Abladeplatze erfüllt und folglich der Gefahr der Reise nicht trägt; denn hätte er erst im Bestimmungshafen zu liefern, so wäre es selbstverständlich und bedürfte keiner Erwähnung, dass die Kosten der Reise bis dahin ihm zur Last fallen.

In Streitfall ist aber die Abkürzung cif im völlig anderen Zusammenhange verwandt. Der Kaufpreis ist nicht 1280
in fester Summe bedungen, sondern er soll in der Weise verechnet werden, dass der Einstandspreis festgestellt und zu diesem ein Gewinn von 10% zugeschlagen wird. Als Einstandspreis soll aber der Betrag auf den die Ware der Verkäuferin in Kopenhagen zu stehen kommt (nämlich der Fakturenwert zuzüglich der Fracht und der Versicherungskosten bis zum Bestimmungshafen) zu Grunde gelegt werden. Nur dies ist mit dem Ausdruck "Wert der Ladung *cif* Ostseehafen" gemeint—der in diesem Zusammenhange nichts anderes bedeutet, als Wert der Ladung *im* Ostseehafen—. Als Wert der vertraglichen Leistung, auf den die Verkäuferin 10% verdienen 1281
soll, ist also derWert im Ostseehafen angenommen. Dies weist auf das stärkste darauf hin, dass als vertragliche Leistung die Lieferungim Ostseehafen angesehen ist.

Damit stimmt es durchaus, dass der Reichseinkauf verpflichtet sein sollte, die Ware im Ostseehafen abzunehmen. Freilich kann die Abnahme einer gekauften Ware auch an einem anderen Orte als am Erfüllungsorte des Verkäufers stattfinden. Wenn aber, wie im Streitfalle die Verbindlichkeit des Käufers dahin bestimmt ist, dass er die Ware im Bestimmungshafen abnehmen und sie daselbst nach ihrer Ankunft gegen die Konnossemente mit einem Preise bezahlen soll, der dem Einstandspreise im Bestimmungshafen zuzüglich eines dem Verkäufer zugestandenen Verdienstes entspricht, so führt das ungekünstelte Verständnis dieser Abrede dahin, dass der Verkäufer diejenige Leistung zu prästieren hatte, nach deren Wert sein Entgelt berechnet wurde,—nämlich Lieferung im Bestimmungs-

hafen—und dass der Ort der Abnahme der Ware, der sich ja aus den Abreden über die Verschiffung von selbst ergab, im Vertrage besonders hervorgehoben ist, weil er mit dem Erfüllungsorte des Verkaüfers, der häufig in Verträgen festgestellt wird, zusammenfallen sollte.

Gegen dieses Verständnis des Bestätigungsbriefes lässt sich auch aus dem späteren Verfahren der parteien nichts entnehmen. Nachdem die Ankunft und die Beschlagnahme der mit den D. "United States" und "Hellig Olaf"
1283 verladenen Waren bekannt geworden war, haben beide Parteien sich um die Freigabe bemüht. Wenn unter solchen Umständen Herr Volckens am 29. April an Herrn Boening telegraphiert: "Sielcken gewiss gern bereit alles mögliche in *Ihrem* Interesse zu tun, um *Ihnen* zu helfen," so ist es nicht einmal klar, dass der Absender damit bewusst hat ausdrücken wollen, dass allein das Interesse der Klägerin gefährdet sei; noch weniger ist es sicher, dass der Empfänger das Telegramm so verstanden hat. Vor allem handelt es sich um eine rechtlich unerheblich Redewendung, über die man hinweglesen konnte und die keinen Widerspruch nötig machte, wenn sie unzutreffend
1284 war. Hinzu kommt der Inhalt des von Herrn Sielcken am 29. Mai an Levin gerichteten Briefes. Er teilt mit, *seine* Firma ha be es arrangiert, dass die gesamte vonihr verschiffte Ware in Skandinavien bleibe und fordert Levin unter Zusage einer Kommission von 5% auf, die Ware in Dänemark oder auch in England zu verkaufen, Das kann den Anschein erwecken, dass er sein Haus für den Eigentümer der Ware, oder doch für denjenigen, den die Gefahrt traf, hielt. Dem gegenüber verschlägt es auch nichts, dass die Klägerin die Konnossemente der United States und der Hellig Olaf angenommen, die Ladung der United States sogar bezahlt hat, obwohl sie um die Beschlagnahme wusste. Das Schiedsgericht ist Uberzeugt, dass die Klägerin so nur in der Erwartunggehandelt hat, die Ware freimachen zu können, und dass sie ebenso ie Sielcken, sich nur geminschaftlich bemüht hat, androhenden Schaden im beiderseitigen Interesse abzuwenden, ihre gegensäztlichen Rechtsanschauungen aber erst später geltend gemacht hat.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1285

Unter diesen Umständen muss das Schiedsgericht den streitigen Vertrag auf Grund des ungekünstelten Verständnisses des Bestätigungsbriefes dahin auslegen, dass, wie die Bezahlung, so auch die Lieferung der zu verkaufenden Ware im Bestimmungshafen erfolgen sollte, wonach die Käuferin die Gefahr der Reise zu tragen hat.

IV. Hinsichtlich der mit der Gunborg verladenen Ware entscheidet dies den Streit ohne weiteres zu Gunsten der Klägerin. Diese Waren, die am 12. April von New-York abgegangen waren, sind der Klägerin am 21. April durch das Telegramm Anlage 16 angedient worden; sie sind also Gegenstand eines Kaufsgeschäftes zwischen den Parteien geworden, sie sind aber auf der Reise vorlorengegangen, konnten also nicht geliefert werden. Die Klägerin ist deswegen auch nicht verpflichtet, sie zu bezahlen. 1286

V. Hinsichtlich der Abladungen mit den Dampfern United States und Hellig Olaf ist grundsätzlich ebenso zu entscheiden. Hier steht in erster Linie der unter II— dargelegte Grund.

Diese Abladungen sind den Beklagten zuerst am 28. März und 21. April 1915 nach ihrer Ankunft in Kopenhagen angezeigt worden. Die Verkäuferin war aber nicht berechtigt, auf das verbindliche Kaufangebot der Klägerin vom 25. September 1914 Waren anzudienen, welche, wie ihr europäischer Vertreter wusste, mit der englischen Beschlagnahme belastet waren und zu deren Herausgabe die Reederei infolgedessen nicht genötigt werden konnte. 1287

Ausserdem führt aber die unter III. gebilligte Auslegung des Vertrages dazu, dass die Verkäuferin die Folgen der Beschlagnahme tragen muss. Die Verkäuferin hatte zu Kopenhagen zu liefern und hatte folglich die Gefahr der Reise zu tragen. Sind die Waren auch körperlich unverletzt in Kopenhagen angekommen, so waren sie doch auf der Reise von der Beschlagnahme betroffen. Die Gefahr dieses Ereignisses fällt also der Verkäuferin zur Last. Konnte die Reederei wegen der Beschlagnahme nicht zur Herausgabe der Waren genötigt werden, so konnte die Verkäuferin nicht liefern und hat folglich keinen Anspruch auf den Preis.

1288 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

VI. Auch bezüglich der Abladungen United States und Hellig Olaf wäre die Sache hiernach zur Entscheidung reif, wenn die Klägerin die Konnossemente sofort zurückgewiesen hätte. Sie hat jedoch die Konnossemente über beide Abladungen entgegengenommen und—wie es besonders nach dem Briefe Bruhns vom 20. April 1915 (Anlage 19) den Anschein hat—sich damit befasst, die Freigabe der Waren zu erwirken, anstatt dieselgen zurückzugeben und ihren ablehnenden standpunkt klar zum Ausdruck zu
1289 bringen. Aus welchen Gründen ihre Bemühungen keinen Erfolg gehabt haben, hat bisher keine Partei klargestellt. Die von der Klägerin beigebrachten Urteile dänischer Gerichte ergeben allerdings, dass ein gerichtlicher Zwang gegen die Reederei nicht mit Aussicht auf Erfolg versucht werden konnte. Unklar ist aber geblieben, ob durch sofortige Beibringung einer Erklärung, dass die Ware in Dänemark bleiben werde, (betr. home consumption) wie schon der an Anlage 19 angeheftete Brief vom 18. April sie erwähnt, eine Aufhebung der Beschlagnahme und eine freiwillige Auslieferung abseiten der Reederei hätte erwirkt werden können. Falls dies möglich gewesen wäre
1290 und falls es auf irgendwelche Fehler der Klägerin zurückzuführen wäre, dass die Ware nicht ausgeliefert worden, sondern nach England gebracht ist, so würde Klägerin die Schadensfolgen zu tragen haben.

Demzufolge ist noch weitere Aufklärung zu diesem Punkte gefordert.

Der Mitschiedsgerichter Dr. Kiesselbach wird mit der Zustellung und Hinterlegung des Schiedsspruches beauftragt.

gez. Dr. F. Philippi gez. Dr. Reimer. gez. Dr. Kiesselbach.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1291

TRANSLATION

(Revenue Office
Hamburg)

ARBITRAL DECISION

IN THE MATTER
of 1292

The ZENTRAL - EINKAUFSGESELLSCHAFT OF BERLIN, represented by its Managers: Dr. Georg. Melchior and Mr. Carl Vorwerk,
Plaintiff,

against

The Executors of the Estate of Hermann Sielcken, deceased, to wit: MESSRS. C. DIEDRICHSEN, G. GEORGIUS, CARL ISENBERG and RICHARD ISENBERG, represented by Dr. A. Kaemmerer, Attorney at Law, of Hamburg, 1293
Defendant.

The court of arbitration, to which the claim has been referred by the parties and which consists of the President of the Senate, Dr. F. Philippi, and the attorneys Justizrat Dr. Reimer and Dr. Kiesselbach, issue the following decree which was decided on and drafted in consultation at Hamburg on May 31, 1918:

I. Partial Decision:

It is established that the plaintiff is not obligated to make payment to the defendant for the 500 boxes of lard and 1500 boxes of cereals shipped by the firm of Crossman & Sielcken of New York to Copenhagen on April 12, 1915, by the steamer Gunborg.

1294 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

II. By way of Interlocutory Decision:

It is established that the risk of the voyage, and in particular the risk of the seizure of the 210 barrels of grease and 225 boxes of lard which were shipped on March 11, 1915, by the steamer "United States," and of the 500 boxes of lard shipped by the steamer Hellig Olaf on March 31, 1915, is to be borne by the seller.

III. Order.

1295 The parties are requested to clear up the following points:

1. What was the exact nature of the obligations imposed by the British upon the captains or owners of the steamers with regard to the merchandise in dispute.

2. Would it have been possible to obtain delivery of the merchandise at Copenhagen.

3. What steps were taken by both parties for that purpose and for what reason their endeavors remained unsuccessful.

1296 STATEMENT AS TO FACTS.

Between the Reichseinkauf, of which claimant is the successor, and the New York commercial house, Crossman & Sielcken, of which Hermann Sielcken, deceased, was the personally liable partner, a contract has been concluded, as confirmed by the letter of Undersecretary of State Dr. Richter under date of September 25, 1914. This letter, which is decisive with regard to the contents of the contract, reads as follows:

"I have the honor to confirm that the Reichseinkauf at Hamburg has been ordered to accept delivery at Baltic ports of mixed cargoes of wheat, tea, cocoa, cattle fodder, up to the value of M.600,000.— for each shipment, which cargoes should be shipped on neutral vessels from American harbors to neutral ports on the Baltic Sea. The Reichseinkauf shall pay therefor the value of the cargo

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1297

cif Baltic port (net value plus freight and insurance charges) and 10% commission on this value. Payment shall be made upon arrival of the merchandise and delivery "of the bills-of-lading at the port of destination, etc." On the basis of this agreement Crossmann & Sielcken have shipped merchandise by a number of neutral steamers to neutral ports on the Baltic Sea, primarily to Copenhagen, part of which merchandise has arrived safely and has been accepted by the plaintiff, while another part has been captured or seized by the British. 1298
The parties are in controversy regarding the shipments made by the steamers "United States," "Hellig Olaf" and "Gunborg." The bills-of-lading covering this merchandise were made out to Harry Levin of Copenhagen, who had to handle them according to advices of the representative of Crossmann & Sielcken.

The two steamers United States and Hellig Olaf sailed from New York on March 11th and 31st, respectively. The first notice of the shipment made by these steamers was given to the plaintiff with regard to the United States by letter (Exhibit 8), dated Hamburg, March 28th; with regard to the Hellig Olaf by telegram (Exhibit 16) of April 21st. Both steamers arrived with cargo in Copen- 1299
hagen, viz.: on March 27th and April 17th, respectively. During the voyage, however, they had been stopped by the British and had been released only upon certain assurances. It is not established whether the obligation assumed by the ship owners was to the effect that the merchandise should be returned to England unless it were shown that it would be consumed in Denmark, or to the effect that it had to be returned to England anyhow. In any event, the ship owners refused delivery of the cargo on account of the obligation undertaken. Finally, the merchandise was returned to England and there condemned.

The third steamer, Gunborg, sailed from New York on April 12th. The shipment was notified to plaintiff by telegram of April 21st (Exhibit 16). The steamer was seized by the British and did not arrive at Copenhagen. The cargo was condemned in the same way as the prior shipments.

1300 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

The parties are in dispute as to who shall bear the loss.

"The plaintiff petitions that it be established that it is not obligated to make payment to the defendant for 210 barrels of grease and 255 boxes of lard shipped by the firm of Crossmann & Sielcken from New York to Copenhagen, on March 11, 1915, by the SS 'United States,' and for 500 boxes of lard and 1500 boxes of cereals shipped on March 31, 1915, by
1301 the SS "Hellig, Olaf."

The defendants petition that the claim be dismissed.

The dispute has been discussed in the writ of complaint with supplements, in the answer, in the reply, and in the written argument of the defendants of April 24, 1918. Furthermore, the plaintiff, with a written argument of April 22nd, has submitted a number of decisions, opinions, and other documents referring to the Danish jurisprudence with regard to the obligation of ship owners to deliver merchandise which was seized by the British in the same way as here, in the cases of the SS United States and Hellig Olaf.

1302 In accordance with a request of the chairman, the representatives of the parties have made further declarations in written arguments of May 23 and 28.

Finally, the whole subject-matter of the dispute has been discussed in an oral argument, on which occasion the plaintiff submitted two letters from Bruhn of April 20th and 18th, 1915, the invoice covering the merchandise shipped on the United States, and a statement of the route taken by the bills of lading.

The attorney for the defendants has argued that it is uncertain whether the plaintiff might not have prevented the transfer of the merchandise to England by appropriate measures.

On the basis of the complete material, the court of arbitration has entered its decree:

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1303

GROUNDS:

I. First of all, the construction of the defendants, according to which the firm of Crossmann & Sielcken was acting under a purchasing agency on behalf of the Reichseinkauf, must be dismissed. Although the price was set at the net price plus a commission of 10%, it cannot be deduced therefrom that Crossman & Sielcken were to act as purchasing agents of the Reischseinkauf. If that had been the intention, each piece of business transacted under 1304
the contract disputed, and therefore every individual purchase as well as the freight and storage contracts in the United States and, finally, the shipping contracts, would have been made, from the outset, for the account of the Reichseinkauf and would have had to be reported immediately. In that event, the Reichseinkauf would have had the right to accept delivery of the merchandise purchased for its account prior to shipment from America. On the other hand, Crossman & Sielcken would have had the right to place the merchandise at the disposal of the Reichseinkauf in America, for instance in case shipment had become impossible owing to warlike events, such as a prohibition of export. All that was obviously not con- 1305
templated. On the contrary, Crossman & Sielcken were to turn over to the Reichseinkauf merchandise of the character agreed upon and to transfer title therein, whereupon they became entitled, as compensation, to the net price plus 10% profit. A contract of sale was, therefore, contemplated.

II. According to the confirmation of September 25th, it is true that there was not concluded a complete contract of sale binding upon both parties. The Reichseinkauf assumed the obligation to accept merchandise of the character agreed on, which would be furnished by Crossmann & Sielcken in the manner established, and to pay a price to be calculated according to the principles agreed on. The Reichseinkauf thereby made an offer of purchase binding for a certain period. However, Crossmann & Sielcken did not undertake any obligation in September,

1306 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

1915. In case they did not consider it advisable to ship any merchandise at all, they could not be forced to do so under the contract. Also, they were not prevented from making shipments to other European purchasers in the same way as to the Reichseinkauf. In other words, they were at liberty to offer and to deliver merchandise of the character specified in the letter of September 25th, which they shipped to neutral Baltic ports, to third persons. Only if and when they notified the Reichseinkauf
1307 that certain merchandise would be supplied on the basis of its offer of purchase, or that such merchandise had been shipped for the Reichseinkauf, did the sale become perfected between the two parties. It results that prior to such notification the risk of a certain cargo could not, in any event, pass to the plaintiff, for it is unthinkable that the purchaser should bear the risk for a certain thing, before a certain object has been finally determined, which he would be obligated to accept and the seller to deliver.

In view of the foregoing, the risk of the voyage cannot have passed to the plaintiff, with regard to the shipment per the United States and the Hellig Olaf, however
1308 the contract of September 25th may be interpreted. Grossmann & Sielcken had shipped the merchandise to Harry Levin's address in Copenhagen. The latter was their representative, not the representative of the plaintiff even though he may have been suggested to them by the plaintiff as a suitable person. This results quite clearly from Exhibits 7-9 and 4, according to which Levin received the bills-of-lading from the representative of the seller in order to deal therewith according to its advice, and that he turned them over, at its request, to the representative of the plaintiff, Daniel Bruhn. The letter of May 29, 1915 (Exhibit 4), of Mr. Sielcken, deceased, shows also that he considered Levin as his representative. The transmittal of the bills-of-lading to Levin was, therefore, not an offer of the merchandise directed to the plaintiff. On the contrary, such an offer relating to the merchandise on the United States was received by the plaintiff only with the letter dated Hamburg, March 28th

(Exhibit 8). Prior thereto, the plaintiff did not know anything about this shipment. Since the steamer arrived in Copenhagen as early as March 27th, Levin, the Copenhagen representative of the seller (if not its Hamburg representative) was certainly informed on the 28th of the seizure. The first notice of the shipment by the Hellig Olaf, which arrived in Copenhagen on April 17th, was given by the seller to the purchaser by the telegram of April 21st (Exhibit 16), only after Mr. Sielcken, the shipper, had admittedly been informed by Levin of the seizure. Consequently, both shipments were offered by the seller to the purchaser only after the seizure had taken place and was, more-over, known to the European representatives of the purchaser. This was unauthorized. The seller did not have the right to offer to the purchaser, with respect to its binding offer of purchase, merchandise affected by an enemy measure which brought the risk of total loss very close and which, in any event, prevented the purchaser from disposing freely of the merchandise.

The plaintiff would therefore have been entitled to immediately refuse to accept the bills-of-lading and merchandise even though the contract with the defendant of September 25th were interpreted so that the purchaser had to carry the risk of the voyage.

III. Moreover, this interpretation must be considered as unsound.

From the telegram of the Undersecretary of State Richter of September 25th, and from the report of Geheimrat Frisch of September 23, 1915, it would appear very probable that it was the intention and the idea of the Reichseinkauf to contract, not for delivery in the United States but for delivery in a Baltic port. This is not decisive, it is true, because it refers to observations made by persons within the organization of the purchaser. Only if, as contended, Mr. Ballin had communicated the entire contents of the said telegram to Mr. Sielcken would this point be important. Apart from that, the contents of the letter of confirmation alone is decisive, as from its language the circumstances of the case and the character of the whole financial transaction must be understood.

1312 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

The seller, it is true, was a commercial business located in New York, and it accordingly had to fulfill its obligations at that place unless the designation of another place of performance is indicated either from the agreement of the parties or from the circumstances.

However, in consideration of all the circumstances, the court of arbitration has felt constrained to construe the letter of confirmation to the effect that delivery by the seller was to be effected at the port of destination.

1313 The amount of the commission agreed on throws no weight on either side. Possibly, it is true, the Reichseinkauf might have granted the seller a commission of 10%, even in case of delivery at New York, because it meant an advantage to contract with a reliable and solvent house to which all opportunities for an advantageous purchase were open. On the other hand, Crossman & Sielcken could also be very well satisfied with an in-between profit of 10% even in case of delivery at Copenhagen. It must be taken into consideration, in that respect, that the contract was made in the summer of 1914, *i. e.*, at the beginning of the war, and that the risk of transportation was not given much consideration by the seller, all the

1314 more so since it might deem itself sufficiently protected by the war risk insurance, the cost of which was to be refunded. In any event, the Reichseinkauf could not conclude from the rate of commission that the seller wanted to deliver in New York only and that it did not want to bear the risk of the voyage. The amount of the commission, therefore, is immaterial for the decision.

It is also without foundation when the defendants refer to the use of the abbreviation cif in support of their interpretation. When, in the course of the typical shipping business, the price is determined by using the so-called cif-clause, such an abbreviation means that in consideration of the purchase price, which is fixed at a certain sum, the seller is not merely obligated to deliver the merchandise but that, apart from this principal act, he has also to bear the costs of insurance and freight to the port of destination. That may indicate, it is true, that the seller has already fulfilled his obligation of delivery

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at the place of shipment and does not carry the risk of the voyage, for if he had to deliver at the port of destination only it would be a matter of course, and not worth mentioning, that the costs of the voyage to that place fall upon him.

However, in the case under consideration the abbreviation cif is used in an entirely different connection. The sales price is not stipulated at a fixed sum, but shall be calculated by establishing the cost price and adding thereto a profit of 10%. Now the cost price upon which this

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calculation is to be based is the amount representing the value of the merchandise to the seller in Copenhagen (the net price plus freight and cost of insurance to the port of destination). This alone is meant by the term "value of the cargo cif port on Baltic Sea" which, in this connection, means nothing but the value of the cargo *at* the Baltic port. It results that the value of the contractual performance upon which the seller shall earn 10%, is assumed to be the value at the Baltic port. This strongly supports the assumption that delivery at a Baltic port was contemplated as the contractual performance.

It is in complete harmony with the foregoing that the Reichseinkauf was obligated to accept delivery of the

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merchandise at a Baltic port. The acceptance of purchased merchandise, it is true, may also be effected at a place other than the place of performance of the seller. However, when, as in the present case, the obligation of the purchaser is determined to the effect that he shall accept delivery of the merchandise in the port of destination and that he shall pay therefor at such place after its arrival, against the bills-of-lading, a price which corresponds to the cost price at the port of destination plus a profit granted to the seller, a natural interpretation of this agreement leads to the understanding that the seller has to effect the performance which constitutes the basis for the calculation of his remuneration—namely, delivery at the port of destination—and that the place of the acceptance of the merchandise which quite naturally resulted from the stipulation concerning the establishment, was expressly emphasized in the contract because it should

be identical with the place of performance of the seller, which is frequently determined in contracts.

Nothing in the subsequent attitude of the parties speaks against such an interpretation of the letter of confirmation. After the arrival and seizure of the merchandise on board the SS "United States" and "Hellig Olaf" had become known, both parties endeavored to obtain its release. When under these circumstances Mr. Volckens telegraphed to Mr. Boening on April 29th: "Sielcken cer-
1319 tainly gladly willing to do everything possible in *your* interest in order to assist *you,*" it is not even clear that the sender advisedly intended to express thereby that the interests of the plaintiff alone were at stake; even less is it certain that the telegram was so understood by the receiver. Primarily, the language used was without legal significance; it could be passed over and did not call for objections in case it was incorrect. Moreover, the contents of the letter sent by Mr. Sielcken to Levin on May 29th must also be taken into account. He writes that his firm has arranged for all of the merchandise shipped by it to remain in Scandinavia and requests Levin to sell the merchandise in Denmark or in England, promising a
1320 commission of 5%; that he implied that he considered his firm to be the owner of the merchandise, or at least the person carrying the risk. In view thereof, it is non-essential that the plaintiff accepted the bills-of-lading of the United States and the Hellig Olaf and that it even paid for the cargo of the United States although it was informed of the seizure. The court of arbitration is satisfied that the plaintiff acted so exclusively in expectation that it would be able to obtain the release of the merchandise, and that, in the same way as Sielcken, it participated in the endeavors to prevent the threatening damage in the interests of both parties concerned, while it presented its contrary legal conception later on.

In these circumstances, the court of arbitration feels constrained to interpret the contract in dispute in the light of a natural understanding of the letter of confirmation to the effect that the delivery of, as well as the payment for the merchandise to be sold should be made at

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the port of destination, from which it follows that the purchaser has to carry the risk of the voyage.

IV. With regard to the cargo shipped on the steamer Gunborg, the foregoing at once decides the dispute in favor of the plaintiff. This merchandise, which had been shipped from New York on April 12th, was notified to the plaintiff on April 21st by telegram (Exhibit 16). The merchandise became thereby the subject-matter of a sales transaction between the parties. However, it was lost during the voyage and could not be delivered. Consequently the plaintiff is not obligated to pay therefor.

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V. Concerning the shipments per the steamers United States and Hellig Olaf, the same decision must be made in principle. In this respect the argument presented under II has a primary bearing.

These shipments were notified to the defendant for the first time on March 28th and April 21, 1915, respectively, after their arrival in Copenhagen. However, the seller did not have the right to make an offer, on the basis of the binding offer of purchase of the plaintiff of September 25, 1914, of the merchandise which, as was known to its European representative, was encumbered with the British seizure and delivery of which could not be enforced against the ship owners.

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Apart therefrom the interpretation of the contract, as proven under III hereinabove, leads to the conclusion that the seller has to carry the consequences of the seizure. The seller had to make delivery at Copenhagen and therefore had to bear the risk of the voyage. Even though the merchandise arrived physically intact at Copenhagen, it had been affected during the voyage by the seizure. The risk of this happening falls upon the seller. Since, on account of the seizure, the ship owners could not be forced to deliver the merchandise, the seller could not make delivery and accordingly has no right to the price.

VI. With regard to the shipments on the United States and Hellig Olaf, the case would be ready for decision had the plaintiff immediately refused to accept the bills-of-lading. However, it accepted the bills-of-lading with re-

1324 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

spect to both shipments and—as it would appear, particularly in the light of Bruhn's letter of April 20, 1915 (Exhibit 19)—engaged in endeavors to obtain the release of the merchandise, instead of returning the bills-of-lading and expressing in a clear way its attitude declining acceptance. So far neither of the parties has disclosed for what reasons their endeavors remained unsuccessful. The decision of Danish courts, produced by the plaintiff, it is true, show that juridical compulsion could not be
1325 contemplated against the ship owners with any prospect of success. However, it remains unclear whether by the immediate production of a declaration that the merchandise would remain in Denmark (home consumption), as referred to in the letter of April 18th (attached to Exhibit 19), a cancellation of the seizure and a voluntary delivery on the part of the ship owners might have been obtained. In case that had been possible and in case it could be traced to any fault of the plaintiff that the merchandise was not delivered but was transported to England, the plaintiff would have to carry the consequences of the loss.

Therefore, further elucidation of this point has been
1326 requested.

The co-arbitrator, Dr. Kiesselbach, is requested to attend to the service and deposition of this arbitral decision.

Sgd. DR. F. PHILIPPI.
Sgd. DR. REIMER.
Sgd. DR. KIESSELBACH.

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Anlage D

Herrn Dr. Israel

23. Juli 1918.

Sehr geehrter Herr Dr. Kaemmerer!

Einschreiben.

Auf Ihr gefl. Schreiben vom 17.d. Mts. i.Sa.Z.E.G. gegen Hermann S i e l c k e n Nachlass gestatte ich mir zu erwidern: 1328

Ich habe alsbald nach Zustellung des Schiedsspruches an unsere dänische Vertretung mit der Bitte um weitere Mitteilung über den einsigen noch in Frage kommenden Punkt geschrieben; ich bin noch ohne Antwort und übersende Ihnen zu treuen Händen mit der Bitte, den Inhalt der Anlagen als vertraulich zu behandeln abgesehen selbverständlicherweise von Ihrer Befugnis, die den Streitfall betreffenden Tatsachen als vertrauliche an Ihre Klienten weiterzugeben.

1) Brief des Herrn Bruhn an meinen Kollegen Herrn Rehbein vom 29, März 1915, 1329

2) Brief des Herrn Huldermann an Herrn Geheimrat Frisch vom 7. Juni 1915,

Ich bitte um Rücksendung der Anlagen nach genommener Einsicht.

3) Brief des Herrn Bruhn an Herrn Dr. Crasemann, der zur tatsächlichen Aufklärung des Sachverhalts nach Dänemark entsandt war, vom 2.April 1918.

Nach den Anlagen spricht die Wahrscheinlichkeit dafür, dass die Reederei tatsächlich nicht bereit war, gegen Heimkonsumerklärung die Ladung der "United States" auszuliefern, aber immerhin mögen bei dem Dampfer "United States" Zweifel nach der Richtung

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vorliegen, ob, wern sofort eine Heimkonsumerklärung abgegeben worden wäre, die Auslieferung erfolgt wäre.

Bei den übrigen streitigen Dampfern, nämlich "Arkansas" und "Hellig Olaf," die am 17. April in Kopenhagen eingetroffen sind und "Oskar II.", der am 11. Mai in Kopenhagen eintraf, bestehen solche Zweifel nicht. Bei dieser Sachlage ist die Zentral-Einkaufsgesellschaft bereit, die Angelegenheit dahin zu vergleichen, dass
1331 Crossmann & Sielcken den bezahlten Kaufpreis für die Ladung der "United States" behalten, während sie ihre Forderung auf Bezahlung bezw. Vergütung der übrigen sechs Dampferladungen fallen lassen.

Die Firma Crossmann & Sielcken muss sich verpflichten, das, was, ihr etwa später von irgend einer Seite (der englischen Regierung, Assekuranz usw.) für diese Dampferladung bezahlt wird, der Z. E. G. zukommen zu lassen, und müsse sich bereit erklären, sofern dann etwa nach Friedensschluss die Möglichkeit besteht, dass die Z.E.G. selbst den Anspruch auf Ersatz dieses Schadens oder eines Teils gegen Dritte, z.B. die englische
1332 Regierung geltend machen kann, die Z.E.G. hierin nach besten Kräften zu unterstützen.

Wenn dieser Vergleich zustanden kommt, würde die Zentral-Einkaufsgesellschaft bei dem Objekt von ungefahr 418.000 Dollar mit etwa 31.000 Dollar unterlegen sein, im übrigen obgesiegt haben, d.h. sie würde mit mehr als 12/13 obgesiegt haben und mit 1/13 ünterlegen sein.

Ich schlage daher vor, dass die Zentral-Einkaufsgesellschaft von den Kosten des Schiedsgerichts 1/13 trägt, während 12/13 dem beklagtischen Nachlass zur Last fallen.

Ich bin damit einverstanden, dass die aussergerichtlichen Kosten gegeneinander aufgehoben werden, weil die Z.E.G. keine eingentlichen Anwaltskosten, sondern nur Dr. Crasemanns und meine Reiseikosten gehabt hat.

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An diesen Vergleichsvorschlag hält sich die Z.E.G. bis zum 30.d.Mts. gebunden. Ich nehme an, dass vor diesem Zeitpunkt die aus Dänemark angeforderten Informationen eingetroffen sein werden und werde, wenn innerhalb der gesetzen Frist der Vergleich nicht zustande kommt, einen Vergleich auf die ser Grundlage nur dann schliessen, wenn ich mich auf Grund der dänischen Mitteilungen davon überzeuge, dass keine erhebliche Aussicht auf Durchsetzung des diesseitigen Standpunkts im Falle des Dampfers "United States" vorhanden ist. 1334

Zentral-Einkaufsgesellschaft
mit beschränkter Haftung

Ihr sehr ergebener
gez.: Dr. G. Melchior.

Die Richtigkeit der vorstehenden Abschrift wird beglaubigt.

Berlin, den 16. Januar 1928.

(Illegible)
Assessor 1335

(Seal)

(Translation)

Dr. Israel July 23, 1918.

Dear Dr. Kaemmerer: Registered.

In reply to your letter of the 17th inst., in the matter of Z.E.G. vs. Hermann S i e l c k e n Estate, I beg to state:

Immediately upon receipt of the arbitral decision I wrote to our Danish agency asking for further information on the one outstanding point; I am still without reply, and I transmit herewith, in trust, the documents

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listed below with the request that their contents be considered as confidential. Of course, you have the right to forward to your clients, confidentially, the facts concerning the dispute.

1) Letter of Mr. Bruhn to my colleague Mr. Rehbein, of March 29, 1915,

Kindly return the enclosures after you have noted same

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2) Letter of Mr. Huldermann to Geheimrat Frisch, of June 7, 1915,

3) Letter of Mr. Bruhn to Dr. Crasemann, dated April 2, 1918, which letter was sent to Denmark for clearing up the facts.

According to the enclosures it appears likely that the ship owners were actually not willing to release the shipment of the "United States" against a "declaration of home consumption," but nevertheless there might exist doubts concerning the steamer "United States," whether —in case a "declaration of home consumption" had been
1338 made immediately—the delivery would have been executed.

Such doubts do not exist with regard to the remaining steamers under dispute, i.e. "Arkansas" and "Hellig Olaf," which arrived in Copenhagen on April 17th, and "Oscar II, "which arrived in Copenhagen on May 11th. In this situation the Zentral-Einkaufsgesellschaft if willing to settle the matter in such a way that Crossmann & Sielcken retain the purchase price paid for the shipment of the "United States" while they relinquish their claim for payment and/or compensation for the remaining six shipments.

The firm of Crossman & Sielcken shall assume the obligation to transfer to the Z.E.G. any amount which it might receive for these shipments from any quarter (the English Government, insurance company, etc.), and must declare itself willing to assist the Z.E.G. to

the best of its ability in the event that after the conclusion of peace there exists the possibility that the Z.E.G. may claim indemnity for the loss, or part thereof against third persons, for instance, the English Government.

In case this agreement is consummated, the Zentral-Einkaufsgesellschaft will be defeated to the extent of $31,000 on an amount of about $418,000 and will have won as to the balance, i.e. it will have won more than 12/13 and be defeated with 1/13. 1340

I propose therefore, that the Zentral-Einkaufsgesellschaft bear 1/13 of the expense of the arbitration while 12/13 be borne by the defendant estate.

I agree that each party shall bear the extra judicial costs because the Z.E.G. has not had any actual attorney fees but only the traveling expenses of Dr. Crasemann and myself.

The Z.E.G. will hold itself bound by this proposal for settlement until the 30th of this month. I assume that the information requested from Denmark will have arrived by that time and, should the settlement not be 1341
arrived at within the time limit fixed, I will settle the matter on this basis only if I am convinced by the Danish information that there does not exist a great possibility for carrying our point of view in regard to the steamer "United States."

Zentral-Einkaufsgesellschaft
mit beschraenkter Haftung

Yours very truly,

(sgd.) DR. G. MELCHIOR.

The correctness of the above copy is certified.

Berlin, January 16, 1928. (Sgd) Signature
(Seal) Assessor.

1342 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

Anlage E

Dres. BEHN KAEMMERER BAUR
Rechtsanwälte

Hamburg 11, den 25. Juli 1918.
Alterwall 20 II.

Dr. Max C. A. Predöhl
Rechtsanwalt
1343 Zentral Einkaufs-Gesellschaft m.b.H.,
Vorstand,
z.H. des Herrn Dr. G. Melchior.

Berlin W.8.
Behrenstr. 21.

Sehr geehrter Herr Doktor!

Ich erhielt Ihr gefl. Schreiben mit Anlagen und Vergleichsvorschlag in Sachen Z.E.G.;Hermann Sielcken Nachlass. Ich kann die Sache, da der Mitvollstrecker
1344 Herr Georgius von der Firma Th. Wille, der die Angelegenheit in erster Linie behandelt hat, augenblicklich verreist ist, wahrscheinlich erst übermorgen mit meinen Auftraggebern näher beraten und da Sie sich nur bis zum 30. ds. an Ihren Vorschlag gebunden halten, erlaube ich mir zu diesem Vorschlag, insoweit er die Kosten betrifft, zu bemerken, dass die von Ihnen vorgeschlagene Verteilung meiner Ansicht nach doch nicht der Billigkeit entspricht. Den Streitgegenstand bilden doch, wie Sie in der Klagschrift und späteren Ergänzung derselben ausdrücklich ziffermässig festgelegt haben, die Ladungen per D. "Gunborg," "Hellig Olav" und "United States." Nach dem Wert dieser Sendungen wird sich das Schiedsgericht seine Kosten berechnen und so muss doch auch für die Teilung der Kosten unter uns auf Grund des Vergleichs von derselben Grundlage ausgegangen werden. Wollen Sie nicht den kleinen Schritt uns noch weiter entgegenkommen und sich bereit erk-

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lären, dass die Kosten wenigstens so geteilt werden, dass meine Partei 3/4 und die Z.E.G. 1/4 der Kosten des Schiedsgerichts übernimmt? Die Teilung im Verhältnis von 12/13 zu 1/13 macht für meine Partei einen zuschlechten Eindruck und fürchte ich, dass die Herren daran grossen Anstoss nehmen werden.

Zu Absatz 3 auf Seite 2 Ihres Schreibens bemerke ich, dass m. E. ein Schreibfehler insofern vorliegt, als es in Zeile 3 heissen muss "für diese Dampferladung" statt "für diese Dampfer ladungen." Die fragl. Verpflich-

1346

tung kann doch die Frima Crossmann & Sielcken bezw. Hermann Sielcken Nachlass nur für die Ladung per D. "United States" übernehmen, während sie für die übrigen Ladungen, die sie nicht bezahlt erhält, nur selbst Interessentin ist.

Was die Firma Crossmann & Sielcken anbetrifft, so wird dieselbe in Nord-Amerika zwangsweise liquidiert; vielleicht ist die Liquidation schon beendet, wir wissen nichts darüber. Eine Verpflichtung für diese Firma lässt sich also wohl nur in dem Sinne übernehmen, dass seitens der Testamentsvollstrecker des verstorbenen Herrn Hermann Sielcken evt. in dem gewünschten Sinne auf

1347

die Liqidatoren oder sonstige Vertreter der Firma, wenn solche vorhanden sind, eingewirkt wird; daneben könnte aber von Hermann Sielcken Nachlass allen Umfangs die von Ihnen gewünschte Verpflichtung übernommen werden, die ja an sich selbs tverständlich und in Ordnung ist.

Wenn Sie sich die Mühe machen wollen, auf Vorstehendes umgehend noch kurz mit einigen Zeilen zu antworten, würde ich Ihnen zu Dank verpflichtet sein,

Hochachtungsvoll

Dres. BEHN KAEMMERER BAUR
gez. Kaemmerer.

Die Richtigkeit der vorstehenden Abscrift wird beglaubigt.

Berlin, den 16. Januar 1928.

Signature
Assessor.

(Seal)

1348 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

Translation.

Drs. BEHN KAEMMERER BAUR
Attorneys at Law

Dr. Max C. A. Predoehl
Attorneys at Law.

Hamburg 11, July 25, 1918
Alterwall 20 II.

1349 Zentral Einkaufs-Gesellschaft m.b.H.,
Board of Directors,
c/o Dr. G. Melchior,

Berlin W. 8.
Behrnstr. 21.

Dear Doctor:

I am in receipt of your letter, with enclosures and proposition for settlement in the matter of the Z.E.G. vs. Hermann Sielcken Estate. Inasmuch as the co-
1350 executor Mr. Georgius, of the firm Th. Wille, who is primarily in charge of this matter, is at present on a trip, I probably shall not be able to discuss this subject with my principals until day after tomorrow. Since you consider your proposal as binding until the 30th of this month only, I beg to remark as to this proposal that, so far as the costs are concerned, the proposed distribution is, in my opinion, not fair. The matter in dispute, as you expressly set out in figures in the writ of complaint and in a later supplement thereof, involves the shipments of the steamers "Gunborg," "Hellig Olav," and "United States." The court of arbitration will calculate its costs according to the value of these shipments and the distribution of the costs among ourselves should be calculated on the same basis, in view of this settlement. Will you not come a little step further to meet us and declare yourself willing that the costs be so distributed that my party shall as-

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sume 3/4 and the Z.E.G. 1/4 of the expense of arbitration? The distribution in the proportion of 12/13 to 1/13 makes too unpleasant an impression on my party and I am afraid the gentlemen will take offense at it.

As to paragraph 3 on page 2 of your letter, I remark that in my opinion there must be an error in writing inasmuch as it should read in the third line "for this steamer shipment" instead of "for these steamer shipments." The firm of Crossman & Sielcken and/or Hermann Sielcken Estate can assume the obligation in question only for the shipment of the steamer "United States" while for the remaining shipments, for which it does not receive payment, it is only self-interested. 1352

With regard to the firm of Crossman & Sielcken, this firm is under compulsory liquidation in North America; perhaps the liquidation has already been terminated—we know nothing about it. An obligation on behalf of this firm can therefore be assumed only in this way, that the executors of Mr. Hermann Sielcken, deceased, exercise an influence in the above sense on the liquidators or other representatives of the firm—if there should be any besides this, the estate of Hermann Sielcken might assume the desired obligation to the full extent which is in itself a matter of course and quite proper. 1353

I shall be very much obliged if you will kindly take the trouble to reply briefly to the aforesaid.

Respectfully,

DRS. BEHN KAEMMERER BAUR

Sgd. KAEMMERER.

The correctness of the above copy is certified.

Berlin, January 16, 1928. (Seal) Signature

Assessor.

1354 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

Anlage F

Einschreiben 26. Juli 1928.

Dr. G. M. Ste.

Herrn Rechtsanwalt Dr. Kaemmerer,

Hamburg
Alterwall 20 II.

1355 Sehr geehrter Herr Dr. Kaemmerer,

In Sachen Z.E.G. gegen Hermann Sielcken Nachlass bestätige ich den Empfang Ihres gefälligen Schreibens vom 25.ds.Mts.

Ich übersende Ihnen zunächst zu treuen Händen mit der Bitte um Rücksendung einen Bericht des Herrn Bruhn vom 20.ds.Mts. nebst zwei Anlagen. Ich verkenne nicht, dass der Bericht nicht eine genügende Klarheit schafft, und dass, wenn das Schiedsgerichtsverfahren fortgesetzt werden soll, die Erkundigungen ergänzt werden müssen.

In der Frage der Verteilung der Schiedsgerichtskosten bin ich mit Ihrem Vorschlage einverstanden.

1356 Ich bestätige, dass der von Ihnen erwähnte Schreibfehler in Absatz 3 auf Seite 2 meines Schreibens vom 23. Juli in der von Ihnen angegebenen Weise richtiggestellt werden muss.

Mit der Beschränkung der Verpflichtung des Sielcken'schen Nachlasses bezüglich der Ladung der "United States" im Sinne des vorletzten Absatzes Ihres gefälligen gestrigen Schreibens bin ich einverstanden. Aber da ich aus Ihren Ausführungen ersehe, dass Sie namens der Firma Crossman & Sielcken keine Erklärungen abgeben können, somuss in dem Vergleich festgelegt werden, dass der Sielcken'sche Nachlass der Z.E.G. dafür verantwortlich ist, dass dem Vergleich von der Firma Crossman & Sielcken und deren Rechtsnachfolgern im übrigen nicht zuwidergehandelt wird, insbesondere ist also der Sielcken'sche Nachlass im Falle des Zustandekommens des Vergleichs cerpflichtet, die Z.E.G. von den Forderungen

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1357

freizuhalten, welche etwa auf Vergütung der sechs nach dem Vergleich von der Z.E.G. nich zu bezahlenden Dampferladungen von der Firma Crossman & Sielcken oder deren Rechtsnachfolgern oder Vertretern erhoben werden sollten.

Ich bitte höflichst um Mitteilung Ihrer Stellungnahme. Da ich in den nächsten Tagen weiteren Bericht aus Dänemark nicht zu erwarten habe, verlängere ich die Frist bis zur annahme dieses Vergleichs bis zum 1. August d.J. 1358

Ihr sehr ergebener
gez. DR. G. MELCHIOR

Die Richtigkeit der vorstehenden Abschriftwird beglaubigt.

Berlin, den 16. Januar 1928 Signature
Assessor.

(Seal)

1359

Translation.

REGISTERED

July 26, 1928

Dr. G-M Ste.

Dr. Kaemmerer, Attorney,

Hamburg
Alterwall 20 II.

Dear Dr. Kaemmerer:

I confirm receipt of your letter of the 25th inst. concerning the matter of the Z.E.G. vs. Hermann Sielcken Estate.

In the first place, I transmit herewith, in trust, a report of Mr. Bruhn, dated the 20th inst., with two enclo-

1360 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

sures, and request that same be returned. I am not mistaken that the report fails to clear up the situation sufficiently and that, in case the arbitration proceedings shall be continued, the information must be supplemented.

As to the question of the distribution of the arbitration costs, I agree with your proposal.

I confirm that the error in writing in paragraph 3 on page 2 of my letter of July 23rd must be rectified in the manner suggested by you.

1361 I agree to the limitation of the obligation of the Sielcken Estate concerning the cargo of the "United States," as set forth in the second last paragraph of your yesterday's letter. Inasmuch as I learn from your communication that you are unable to make declarations on behalf of the firm of Crossman & Sielcken, it should be established in the settlement that the Sielcken Estate is responsible to the Z.E.G. that the firm of Crossman & Sielcken and its legal successors do not act contrary to the settlement; especially, the Sielcken Estate is obligated, in case the settlement shall be concluded, to save the Z.E.G. harmless from any claims which may be made by the firm of Crossman & Sielcken or its legal successors or
1362 representatives for compensation for the six shipments which, according to the settlement, the Z.E.G. is not obligated to pay for.

I ask you kindly to communicate your opinion in this matter.

Since I am not expecting further information from Denmark, I prolong the time limit for the acceptance of this settlement until the first of August of this year.

Yours sincerely,

(Sgd) DR. G. MELCHIOR

The correctness of the above copy is certified.

Berlin, January 16, 1928.

(Sgd) Signature
Assessor.

(Seal)

Exhibit B Annexed to Answering Affidavit of Braindrd Avery 1363

(Exhibit h)

Dres. Behn Kaemmerer Baur
Rechtsanwaelte

Dr. Max G. A. Predoehl
Rechtsanwalt

Hamburg 11, Den 31. Juli 1918
Alterwall 20 II.

Einschreiben. 1364

Zentral-Einkaufsgesellschaft m.b.H:
z.H.d. Herrn Dr. G. Melchior,

Berlin W 8
Behrenstrasse 21.

Sehr geehrter Herr Doktor:

In Schiedsgerichtssachen Hermann Sielcken Nachlass bestaetige ich Ihnen meine heutiges Telegramm, nach welchem ich Ihren Vergleichsvorschlag, wie er sich aus Ihren Briefen vom 23. und 26. ds. Mts. ergibt, angenommen habe. Danach wird seitens meiner Partei der Anspruch auf Bezahlung der sechs Dampferladungen, mit 1365
Ausnahme der Ladung per D. "United States," fallen gelassen, waehrend die Z.E.G. die Ladung per D. "United States" zu bezahlen hat, bezw. meine Partei den bezahlten Kaufpreis behaelt. Von den Kosten des Schiedsgerichts traegt Hermann Sielcken Nachless 3/4 und die Z.E.G. 1/4; dis aussergerichtlichen Kosten werden gegeneinander aufgehoben. Die Firma Crossman & Sielcken bleibt verpflichtet, der Z.E.G. zukommen zu lassen, was ihr etma fuer die Ladung der "United States" zugekommen sein sollte oder in Zukunft zukommen sollte. Sie hat auch die Z.E.G., wenn diese selbst den Anspruch auf Erlass des Schadens oder eines Teils desselben gegen Dritte, z.B. gegen die englische Regierung geltend machen will, hierin nach besten Kraeften zu unterstuetzen. Fuer die Firma Crossmann & Sielcken kann jedoch diese Verpflichtung seitens Hermann Sielcken Nachlass nur in dem Sinne uebernommen werden, dass in dem genannten Sinne seitens der Testamentsvollstrecker des verstorbenen Hermann

1366 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

Sielcken auf die Liquidatoren oder sonstige Vertreter der Firma, wenn solche vorhanden sind, eingewirkt wird. Ausserdem ist Hermann Sielcken Nachlass, vertreten durch die Testamentsvollstrecker, der Z.E.G. dafuer verantwortlich, dass von der Firma Crossmann & Sielcken bezw. deren Rechtsnachfolgern dem Vergleich im uebrigen nicht zuwider gehandelt wird, insbesondere hat demgemaess der Hermann Sielcken'sche Nachlass die Z.E.G. von etwaigen Forderungen freizuhalten, die auf
1367 Verguetung der sechs nach dem Vergleich van der Z.E.G. nicht zu bezahlenden Dampferladungen von der Firma Crossmann & Sielcken bezw. deren Rechtsnachfolgern oder vertretern spaeter erhoben werden sollten.

Ich glaube, dass mit vorstehendem alles gesagt ist. Soll nun ueber den Vergleich ein besonderes, von beiden Parteien unterschriebenes Schriftstueck ausgefertigt werden, oder ist das nicht erforderlich? Diesseits wird kein Wert darauf gelegt. Wuenschen Sie ein solches Dokument, so bitte ich zugleich um Mitteilung, ob Sie damit einverstanden sind, dass fuer den Hermann Sielcken'schen Nachlass der Testamentsvollstrecker Herr Gustav Diederichsen, Seniorchef der Firma Theodor Wille, allein zeich-
1368 net; die anderen drei Herren, Herr G. Georgius, Mitinhaber der Firma Theodor Wille, und die beiden Herren Isenberg, Brueder von Frau Sielcken, sind z.Zt. nicht leicht zu erreichen. Ich denke, die Unterschrift von Herrn Gustav Diederichsen wird Ihnen genuegen.

An den Vorsitzenden des Schiedsgerichts koennen wir wohl kurz gemaess Anlage schreiben und bitte ich Sie, wenn Sie einverstanden sind, diese Anzeige zu unterzeichnen und an ihre Adresse zu expedieren.

Saemtliche Anlagen zu Ihren Briefen vom 23. und 26. ds. fuege ich mit bestem Dank wieder bei.

Hochachtungsvoll

Ihr sehr ergebener
gez. Kaemmerer.

Die Richtigkeit der vorstehanden Abschrift wird beglaubigt.

Berlin, den 16. Januar 1928. Signature
Seal Assessor.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1369

Translation

2/58 G

Dres. Behn Kammerer Baur
Attorneys at Law

Dr. Max G. A. Predoehl
Attorney at Law.

Hamburg 11, July 31, 1918. 1370
Alterwall 20 II.

REGISTERED.

Zentral-Einkaufsgesellschaft m.b.H.
c/o Dr. G. Melchior,

Berlin W 8
Behrenstrasse 21.

Dear Doctor:

In the arbitration matter of the Hermann Sielcken Estate, I beg to confirm my telegram of today, according to which I have accepted your offer of compromise as it 1371 is set out in your letters of the 23rd and 26th of this month. Consequently my party relinquishes the claim for the payment for the six shipments, with the exception of the shipment per SS "United States," while the Z.E.G. has to pay for the shipment per SS "United States," and my party keeps the sales price which has been paid. The costs of the arbitration are to be borne by the Hermann Sielcken Estate in the ratio of 3/4 and by the Z.E.G. in the ratio of 1/4. Each party shall bear its own extra judicial costs. The firm of Crossmann & Sielcken remains obligated to turn over to the Z.E.G. whatever it may have received or may receive in future for the shipment per the "United States." It also undertakes to assist the Z.E.G. to the best of its ability in case the Z.E.G. shall decide to make claim for compensation for the damage or a part thereof against third persons, for instance, against the British Govern-

1372 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

ment. This obligation, however, can be assumed by the Hermann Sielcken Estate on behalf of the firm of Crossmann & Sielcken only in the sense that the executors of Hermann Sielcken, deceased, shall bring influence to bear in this direction upon the liquidators or other representatives of the firm, if there be any. In addition, the Hermann Sielcken Estate, represented by the executors, is responsible to the Z.E.G. that the firm of Crossmann & Sielcken and/or its legal successors shall not,
1373 in other respects, act contrary to the settlement. In particular, the Hermann Sielcken Estate shall save harmless the Z.E.G. from any claims which may later on be made by the firm of Crossman & Sielcken and/or its legal successors or representatives for the shipments which shall not be paid.

I believe that the foregoing covers the whole ground.

Must the compromise be executed in a separate document signed by both parties, or is that not necessary? On our side, we do not place any weight on this detail. In case you desire such a document, please advise at the same time whether you agree that the executor Mr. Gustav Diederichsen, Senior Member of the firm of Theo-
1374 dor Wille, may sign alone on behalf of Hermann Sielcken Estate. At the present time it is not easy to get hold of the three other gentlemen: Mr. G. Georgius, co-partner of the firm of Theodor Wille, and the two Messrs. Isenberg, brothers of Mrs. Sielcken. I think you will consider the signature of Mr. Gustav Diederichsen sufficient.

I suggest that we send a short notice to the chairman of the court of arbitration, as per enclosure, and in the event that you agree, I would ask that you sign this communication and mail it to its address.

All the enclosures sent with your letters of the 23rd and 26th inst, are returned with my best thanks.

Respectfully yours,

Sgd. KAEMMERER.

The correctness of the above copy is certified.

Berlin, January 16, 1928. Seal Signature. Assessor.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1375

(Exhibit i.)

Dr. G. M. Ste. 1. August 1918.

Herrn Rechtsanwalt Dr. Kaemmerer,

Hamburg
Alterwall 20 II.

Sehr geehrter Herr Dr. Kaemmerer:

In Sachen Crossmann & Sielcken bestaetige ich den 1376
Empfang Ihrer gefaelligen gestrigen Depesche laut Anlage und Ihres gestrigen Schreibens nebst Anlagen. Mit dem Inhalt Ihres Schreibens bin ich einverstanden.

Es wuerde mir erwuenscht sein, eine Bestaetigung des Zustandskommens des Vergleichs auch von Sielcken Nachlass zu erhalten, weil ich nicht weiss, ob spaetere Liquidatoren der Zentral-Einkaufsgesellschaft mit einer lediglich von Ihnen stammenden Erklaerung—die mir vollstaendig genuegen wuerde—zufrieden sein werden. Aber dann wuerde wohl eine Unterschrift durch soviel Testamentsvollstrecker noetig sein wie zur Vollstreckung des Nachlasses erforderlich sind. Ich gestatte mir, auf Par. 179 1377
Absatz 3 1 B.G.B. zu verweisen.

Ich bitte Sie also, mir gelegentlich eine dem Inhalt Ihres gefaelligen gestrigen schreibens entsprechende Erklaerung des Nachlasses zukommen zu lassen. Sie werden dann eine Zustimmungserklaerung der Zentral-Einkaufsgesellschaft erhalten. Der Vergleich ist selbstverstaendlicherweise schon jetzt endgueltig zustande gekommen.

Die von Ihnen entworfene Mitteilung an den Vorsitzenden des Schiedsgerichts wird mit der Unterschrift der Z.E.G. an ihn eingesandt.

Ihr sehr ergebener
gez. Dr. G. Melchior.

Die Richtigkeit der vorstehenden Abschrift wird beglaubigt.

Berlin, den 16. Januar 1928. Seal. Signature. Assessor.

1378 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

Translation

2/61 H

August 1, 1918.

Dr. G. M. Ste.
Dr. Kaemmerer, Attorney at Law,

Hamburg
Alterwall 20 II.

1379 Dear Dr. Kaemmerer:

In the matter of Crossmann & Sielcken, I confirm receipt of your telegram of yesterday as per enclosure, and of your letter of yesterday with enclosures. I agree with the contents of your letter.

I would like to receive a confirmation of the consummation of the compromise from the Sielcken Estate also, for the reason that I do not know whether, at a later date, the liquidators of the Zentral-Einkaufsgesellschaft will be satisfied with a declaration signed by you alone—which would be perfectly satisfactory as far as I am concerned. However, in that case the signature of as many executors would be necessary as are required for the representation of the Estate. I beg to refer to Sec. 179, Par. 31 of the Civil Code.

1380

I also request you to send me in due course a declaration of the Estate along the lines suggested in your favor of yesterday. You will then receive a declaration of assent by the Zentral-Einkaufsgesellschaft. As a matter of course, the compromise is final and binding even now.

The notification to the chairman of the court of arbitration, as drafted by you, will be sent to him with the signature of the Z.E.G.

Very truly yours,

Sgd. Dr. G. Melchior.

The correctness of the above copy is certified.

Berlin, January 16, 1928 Seal Signature
Assessor.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1381

Exhibit k)

Dres. Behn Kaemmerer Baur
Rechtsanwaelte
Dr. Max G. A. Predoehl
Rechtsanwalt.

Hamburg 11, den 5.Sept.1918.
Alterwall 20 II.
044194 6.Sept.18. 1382

Zentral-Einkaufsges. m.b.H.
Zentralabteilung,

Berlin W 8
Behrenstrasse 21.

Betr: Crossmann & Sielcken/Hermann Sielcken Nachlass.

In der durch Vergleich erledigten Sache beehre ich mich, Ihnen einliegend den von den vier Testamentsvollstreckern des verstorbenen Herrn Hermann Sielcken in vereinbarter Form gezeichneten Revers zu uebermitteln. Damit ist diese Angelegenheit als erledigt zu betrachten. 1383

Zugleich erwidere ich auf Ihre gefl. Zuschrift vom 31. August im Anschluss an Ihr Schreiben vom 16. August, dass ich noch nicht wieder hergestellt bin und mich z.Zt. noch in der Klinik befinde. Ich habe die Angelegenheit deshalb noch nicht mit den Testamentsvollstreckern, und zwar mit den Herren der Firma Theodor Wille, naeher besprechen koennen. Dies wird voraussichtlich auch erst in einigen Wochen moeglich sein. Ich glaube, Sie werden sich meiner Ansicht anschliessen, dass die Angelegenheit doch durchaus nicht eilig ist und auch auf keinen Fall in aller naechster Zeit wird erledigt werden koennen, sodass die kurze Verzoegerung jedenfalls die Interessen der Z.

1384 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

E. G. nicht beeintraechtigt. Ich werde sobald als moeglich auf die Angelegenheit zurueckkommen.

Hochachtungsvoll

Dres. Behn Kaemmerer Baur
gez. Kaemmerer.

E.
Rechtsabteilung
1. Anl.
1385 Expedition. Op.

Die Richtigkeit der vorstehenden Abschrift wird beglaubigt.

Berlin, den 16. Januar 1928.
Seal. signature. Assessor.

Translation

2/63 I

1386 Dres. Behn Kaemmerer Baur
Attorneys at Law
Dr. Max G. A. Predoehl
Attorney at Law

Hamburg 11, Sept. 5, 1918.
Alterwall 20 II.
044194 Sept. 6, 1918.

Zentral-Einkaufsges. m.b.H.
Central Department,

Berlin W 8
Behrenstrasse 21.

Re: Crossmann & Sielcken/Hermann Sielcken Estate.

In the above matter, which has been disposed of by compromise, I have the honor to transmit herewith a declaration, signed in the form agreed on by the four executors of Mr. Hermann Sielcken, deceased. The matter is now to be considered as finally settled.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1387

At the same time I reply to your favor of August 31st, referring to your letter of August 16th, that I have not yet recovered and am still confined to the hospital. For this reason I have not been able to discuss the subject in detail with the executors and with the gentlemen of the firm of Theodor Wille. This will probably only be possible after some weeks. I believe you will concur in my opinion that the matter is not at all urgent and that in no event can it be disposed of in the near future, so that the short delay will not be prejudicial to the interests of the Z. E. G. I will revert to the matter as soon as possible. 1388

Respectfully yours,

Dres. Behn Kaemmerer Baur
Sgd. Kaemmerer

E.
Law Department.
1 Encl.
Forwarding Department Op.

The correctness of the above copy is certified. 1389

Berlin, January 16, 1928.

Seal. Signature. Assessor.

(Exhibit 1.)

An die

Zentral-Einkaufsgesellschaft m.b.H., Vorstand,

Berlin W. 8.
Berehnstr. 21.

Nachdem in der zwischen Ihnen und uns als Testamentsvoll-streckern des verstorbenen Herrn Hermann Sielcken vor dem Schiedsgericht, bestehend aus dem Senatspräsi-

1390 *Exhibit B Annexed to Answering Affidavit of Brainard Auery*

denten Herrn Dr. F. Philippi und den Rechtsanwälten Herrn Justizrat Dr. Reimer und Herrn Dr. Kiesselbach, behandelten Angelegenheit durch den uns vertretenden Rechtsanwalt Dr. A. Kaemmerer ein Vergleich geschlossen ist und durch denselben die zwischen uns wegen der Abladungen der Firma Crossmann & Sielcken von New York nach Kopenhagen aus dem Jahre 1915 entstandenen Differenzen erledigt sind, bestätigen wir Ihnen, dass wir in unserer oben genannten Eigenschaft Ihnen dafür auf-
1391 kommen, dass von der Firma Crossman & Sielcken bezw, deren Liquidatoren oder Rechtsnachfolgern der geschlossene Vergleich anerkannt wird. Insbesondere werden wir Sie von etwaigen Forderungen freihalten, die auf Vergütung dersechs nach dem Vergleich von Ihnen nicht zu bezahlenden Dampferladungen von der Firma Crossman & Sielcken bezw. deren Rechtsnachfolgern oder Vertretern etwa später noch gegen Sie erhoben werden sollten. Ferner werden wir nach Möglichkeit bei den Liquidatoren oder sonstigen Vertretern der Firma Crossman & Sielcken, falls solche vorhanden sein werden, dahin wirken, dass sie Ihnen alles zukommen lassen, was sie etwa von anderer Seite für die Ladung der "United States" erhalten
1392 haben sollten oder erhalten werden, sowie dass sie Sie, wenn Sie selbst einen Anspruch auf Ersatz des Schadens oder eines Teils desselben gegen Dritte, z. B. gegen die englishe Regierung, geltend machen wollen, nach besten Kräften unterstützen.

Hamburg, den 31. August 1918.

gez.: G. Diederichsen — gez.: A. C. Isenberg.
gez.: G. Georgius — gez.: R. M. Isenberg.

Exhibit B Annexed to Answering Affidavit of Brainard Avery 1393

TRANSLATION

2/65 K

To the

Zentral Einkaufsgesellschaft m.b.H., Board of Directors,

Berlin W. 8
Berehnstr. 21.

1394

We refer to the matter handled between you and ourselves in the capacity of executors of Hermann Sielcken, deceased, before the court of arbitration, composed of Dr. F. Philippi, President of the Senate, and the attorneys at law Justizrat Dr. Reimer and Dr. Kesselbach. We refer also to the compromise concluded in the said matter by our representative, Dr. A. Kaemmerer, whereby the dispute arisen between us with regard to the shipments of the firm of Crossmann & Sielcken from New York to Copenhagen in the year 1915, has been settled. We confirm that, in our above capacity, we assume the responsibility that the firm of Crossman & Sielcken and/or 1395
its liquidators or successors will recognize the compromise concluded between us. In particular, we undertake to save you harmless against any possible claims which may later on be made by the firm of Crossmann & Sielcken and/or its successors or representatives for payment for the shipments which you are not obligated to pay for under the compromise. Furthermore, we will endeavor, as far as possible, to induce the liquidators or other representatives of the firm of Crossman & Sielcken, if there should be any, to turn over to you whatever they may have received or may receive from any other source for the cargo of the "United States." We will also endeavor to induce the said persons to assist you to the best of their ability in case you should desire to make claim for compensation for the damage or a part thereof

1396 *Exhibit B Annexed to Answering Affidavit of Brainard Avery*

against third persons, for instance, against the British Government.

Hamburg, August 31, 1918.

Sgd.: G. Diederichsen Sgd.: A. C. Isenberg.
Sgd.: G. Georgius Sgd.: R. M. Isenberg

The correctness of the above copy is certified.

Berlin, January 16, 1928

1397

(Seal)

(Sgd.) Signature
Assessor.

1398

Exhibit C Annexed to Answering Affidavit of Brainard Avery. 1399

Opinion

in the matter of the Estate of Hermann Sielcken, deceased.

I.

Hermann Sielcken, who deceased October 8, 1917, was a citizen of the United States of America, and at the time of his death resided in Baden-Baden. He and his wife 1400
Clara, nee Isenberg, on February 18, 1917, made a joint mutual last will and testament, which—apart from certain new stipulations and alterations—left their New York wills of March 23rd, 1914, in full force and effect, but above all had for its object the bringing into line and agreement with German law of the provisions made in favor of Mrs. Sielcken's two children.

In the Will of February 18, 1917 both husband and wife mutually appointed each other universal legatees, and determined, that the total combined property should, after the death of the ultimate survivor pass to the two children of the wife, Mrs. Sielcken, in equal shares, whereas the administration and disposal of the entire 1401
estate should remain in the hands of the executors of the Will. The following were appointed executors of the Will:

Gustav Diederichsen and Georg Georgius in Hamburg
Karl Isenberg in Travenort (Hollstein), and
Richard Isenberg in Tessin (Mecklenburg),

with the proviso that, in the event of one of the executors not being able to accept the appointment or to continue to perform the duties thereof, the survivor shall be entitled to indicate or nominate a new executor to be appointed by the competent Probate Court, so that there shall at all times be three executors in office.

II.

The testator Hermann Sielcken was the personally liable partner in the partnership firm of Crossman &

1402 *Exhibit C Annexed to Answering Affidavit of Brainard Avery*

Sielcken in New York, in which he held all the capital; he was only entitled to one half-share of the profits of the firm. This firm, during the war, and by virtue of an agreement with the "Reichseinkauf" (Official Buying Board) had undertaken to supply and deliver several shiploads of foodstuffs to neutral baltic ports, to the maximum value of Mks. 600,000.—, and effected the corresponding shipments. Four of the six ships fitted out by Crossmann & Sielcken were, after their arrival at
1403 Copenhagen, compelled by Government order to return to England, where three ships and their cargoes were sequestrated.

On account of these cargoes the "Zentral Einkaufs-Gesellschaft m. b. H. in Berlin" (Central Buying Company Inc.), a successor of the "Reichseinkauf," in accordance with the arbitration agreement entered into on December 31, 1917 with Attorney-at-Law Dr. Kaemmerer in Hamburg as the legal representative of the executors of the Sielcken estate, brought an action against the Sielcken estate, represented by the executors G. Diederichsen and G. Georgius—the partners in the firm of Theodor Wille in Hamburg—Karl and Richard Isenberg, with
1404 the object of obtaining a judicial declaration that they (the corporation aforesaid) were not obliged to pay for the cargoes shipped by Crossmann & Sielcken to Copenhagen in March and April 1915 by the steamers "United States," "Hellig Olaf," and "Gunborg." This action was decided in petitioner's favor as regards the cargo of SS Gunborg, by interim award dated May 31, 1919; as regards the rest of the petition, however, it was determined and declared by interlocutory decree as a matter of principle, that the risk of the incidental loss and sequestration of the cargoes of SS United States and SS Hellig Olaf had to be borne by the vendors.

In pursuance of this decision the following arrangement was arrived at between the contending parties:

The Sielcken estate waives its claim for payment for the six ships' cargoes, with the exception of the cargo of the SS United States, for which payment shall be made by the Z.E.G. The estate takes over three fourths, the

Exhibit C Annexed to Answering Affidavit of Brainard Avery 1405

Z.E.G. one fourth share of the costs of the action. The firm of Crossmann & Sielcken undertakes to hand over to the Z.E.G. everything it has received or may receive on account of the cargo of the SS United States, and likewise to support the Z.E.G. in every possible way in its persecution of claims for compensation against third parties, for instance the British Government. At the same time the Sielcken estate, represented by the executors, will see to it that no claims contrary to this arrangement are put forward by the firm of Crossmann & Sielcken; the estate should more especially be under an obligation to absolve and protect the Z.E.G. from every future claim by Crossmann & Sielcken, not provided for in this arrangement, for indemnification on account of said six cargoes. 1406

Under date August 3, 1918 the four executors of the Sielcken estate, in a communication signed by them and addressed to the Z.E.G. expressly acknowledged and confirmed their responsibility for the recognition by Crossmann & Sielcken of the aforesaid arrangement, and likewise that they, in their capacity as executors of the Sielcken estate were prepared to absolve the Z.E.G. from every claim which at some future date might possibly be made by Crossmann & Sielcken in connection with payment for the cargoes in question. 1407

III.

The executors G. Diederichsen and G. Georgius are the partners in the firm of Theodor Wille in Hamburg, which firm was, by private arrangement, interested as to one half-share in the Crossmann & Sielcken consignment.

IV.

It is asked:

a) according to the law of which country should Hermann Sielcken's Will of February 18, 1917 be dealt with?

1408 *Exhibit C Annexed to Answering Affidavit of Brainard Avery*

b) Whether German or United States law is applicable to the executors of his Will;

c) Whether the guarantee declared and undertaken by the executors of the Will in the name of the Sielcken estate in connection with the arrangement with the Z.E.G. is valid and effective in law, more especially whether the undertaking of the guarantee constitutes a violation of the trust and official duties incumbent upon the
1409 executors;

d) Whether the widow Clara Schwarz-Sielcken as the heiress of Hermann Sielcken is entitled to take action for compensation against the executors, and whether she is legally competent to proceed in the Courts against them.

In re a)

The fact that the testator Hermann Sielcken, in his Will drawn in due legal form in accordance with Art. II of the Introductory Law to the German Civil Code in
1410 combination with §2231 fig. 2 German Civil Code, made German law the basis of his last Will and Testament, does not by any means obviate the necessity for an inquiry into the question as to which laws of succession or inheritance (*i. e.* German or American) are applicable to the case under consideration.

Inasmuch as Hermann Sielcken was an American Citizen, and at the time of his death his place of residence was Baden-Baden, the law of succession or inheritance in this case is first of all governed by Art. 25 of the Introductory Law to the German Civil Code, according to which the estate of an alien, residing at the time of his death in this country, passes to his heirs in accordance with the laws of the country of which he was a National at the time of his decease. Here, in accordance with both written authorities and the established practice of the Courts, we must start from the fundamental principle,

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that Art. 23 belongs to that category of regulations, which compulsorily restrict the sphere of applicability of German law, and that its wording "beerbt wird" (*i. e.* the estate passes to) in the same manner as in Art. 24 plainly and simply embraces all matters and conditions in connection with succession and inheritance, consequently inter alia also the validity of Wills and Testaments, the order of succession prescribed therein, and the legal status of executors. (Compare Planck Note 3 to Art. 25; Niedner Note 1 to Art. 25, and Note 6 to Art. 24; Staudinger-

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Kuhlenbeck Prefactory Notes to Art. 24 and 25, and Note III to Art. 25 in connection with I, 3 to Art. 24; Walker; International Civil Law, page 895, Niemeyer in Bohm's Journal of International Civil Law etc. XI 1902, page 371, and Supreme Court of the Reich Z Volume 91, page 139).

There is, however, an exception to the rule of Art. 25, embodied in Art. 27, which provides that, in so far as according to the law of the foreign State (the laws of which are in Art. 25 declared to be authoritative and conclusive) German law is to be applied, the latter shall be so applied.

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It is, therefore, in the first place incumbent upon us, in accordance with the laws of the United States, as the State of which the testator at the time of his decease was a National, to investigate (taking as our standard not merely the facts as before us, but also guided by "concurrency") (see Supreme Court Z. 78 page 234 ff), whether the testator was legally entitled to dispose of his estate in accordance with German law in the manner adopted by him in his Will of February 18, 1917; furthermore, to investigate whether, in so doing, he did not violate certain restrictions imposed upon his powers of testation by the laws of his own country, or whether he disregarded any rules or regulations enacted by American law relative to the disposal of his property in due legal form.

With such facts as are before us at the moment it is not possible to pronounce a definite conclusive opinion on this question, inasmuch as the contents of the joint

1414 *Exhibit C Annexed to Answering Affidavit of Brainard Avery*

Wills made by the testator Sielcken and his wife in New York on March 23, 1914 are not known to us here, and as it cannot be determined whether, and if so to what extent, differences in or deviations from the wording thereof affect the validity of the Will of February 18, 1917 according to American law.

Should that not be the case, and if the testator Hermann Sielcken was in no wise restricted in his powers of testation by the laws of his own country, and if, finally,
1415 taking into consideration the effect of the war upon the legal relationship between the two countries, Niemeyers point of view in his opinion on Succession to Citizens of the United States (Bohm's Journal 1902 page 369) still holds good, namely that the inheritance of personal property is to be judged and dealt with according to German and not according to American law, because the law of the testator's country in this respect contains a provision referring the question back to German law, then and in that case the Will of February 18, 1917, in accordance with Art. 27 Introductory Law to German Civil Code, must be interpreted according to the German Civil Code.

1416 In re b)

The same answer applies to the question of the law to be applied and to govern the status and liability of the executors of the Will. If, in accordance with the standards of concurrency in American Law, there is no reference back to German law, then American law must also be applied in forming judgment upon the legal status and liability of the executors, inasmuch as the provisions of Art. 25, as already demonstrated in the foregoing, embrace and govern and regulate all matters in connection with succession and inheritance.

In re c)

If, on the other hand, German law is applicable, it is necessary, (when investigating the question whether the arrangement entered into by the executors of the Sielcken

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estate, for the settlement of the action brought by the Z. E. G., and also whether the guarantee undertaken by them in their written declaration dated August 3, 1918, securing the Z. E. G. against all claims for compensation brought forward by Crossman and Sielcken, constitute a violation of the trust and official duty imposed upon them to start in our arguments from the following considerations:

The executor is the holder of an Official position in the eyes of the law, in other words he is neither the representative or agent of the testator, nor of the estate, nor of the heirs. "§181 of the German Civil Code, which presumes that a representative is a person who enters into a contract or binding engagement with himself or with another person, whom he also represents, does not apply to the executor of a Will. (See Supreme Court of the Reich Z. 61, page 139/145)." The executor's duty is to carry out the testamentary instructions of the testator (§2203 German Civil Code), to procure and effect mutual agreement between co-heirs (§2204), and to administer the estate (§2205). In their duties, their right of disposal over property constituting the estate, their right to take possession, and to enter into contracts and obligations for the due and proper administration of the estate, the executors of the Sielcken estate have in no wise been confined or restricted by the Will of February 18, 1917. They were therefore, as such, also authorized to enter into an undertaking with the Z. E. G. of the magnitude under discussion, provided such an undertaking was necessary within the confines and limits of due and proper administration of the estate.

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The law has, however, erected a barrier against and limiting the rights of disposition of executors, in §2205 Sentence 3. German Civil Code, according to which the executor is only empowered to dispose of the estate or parts of same *free of charge* (that is to say, without receiving valuable consideration in return) in so far as such action is in accordance with a moral obligation or common consideration and decency. All other disposi-

tions by executors, without valuable consideration in return are unlawful; they are simply null and void, ignoring the fact that the recipient knew, and null and void even with the consent of th heir. (Supreme Court of the Reich 74, page 218-105, page 250).

If, therefore, the executors Diederichsen and Georgius, as the partners of the firm of Theodor Wille, were by private agreement interested to the extent of one half share in the undertakings of Crossman & Sielcken, and
1421 if they, in connection with the giving of the guarantee, have not bound themselves to indemnify the Sielcken estate to the extent of and in the amount of their share, we are confronted with a disposal of part of the estate in their own favor, without giving valuable consideration in return, a disposal of no legal value or effect as regards the heirs of Hermann Sielcken.

The invalidity of the obligations undertaken in the guarantee arrangement, insofar as the heirs to the Sielcken estate are concerned, is moreover also demonstrated by the fact, 1) that the above named executors Diederichsen and Georgius assisted and took part in this transaction, although in view of their personal interest,
1422 as partners, in the dispute with the Z. E. G.; they were legally debarred from doing so for personal reasons, and because 2) according to §5 Section 2 sentence 2 of the Will of February 18, 1917 there must always be at least *three* executors in Office. Owing to the aforesaid legal obstacle or hindrance the executors Diederichsen and Georgius were in the sense of §2224 Sect. 1, Sentence 2 German Civil Code, non-existent, eliminated, in the eyes of the law. On the other hand, the other two executors by themselves alone were not authorized to enter into legally binding engagements on behalf of the Sielcken heirs, as, in accordance with the above argument, in §5 Sect. 2 sentence 2 of the Will of February 18, 1917 the testator expressly prescribes that there must always be at least *three* executors in office, so that only this minimum number of executors were empowered to act effectively in law for the estate.

Exhibit C Annexed to Answering Affidavit of Brainard Avery 1423

Any other interpretation of the testator's instructions in this direction is inadmissible, as the wording of the Will "im Amte sein—to be in office" is equivalent to the laws phraseology "das Amt Fuhren—to perform the duties of the office." (§2224, Sect. 1 German Civil Code), and cannot in any way be interpreted as merely meaning, that the Will of the testator, which according to §§2216 Sect. 2, and 2224 Sect. 1, sentence 3 is all that matters, has been adequately complied with if at least three executors have been appointed and only part of them actually functions. (das Amt Fuhrt=performs the 1424 duties or functions of the office.)

Nor is it possible to form a contrary conclusion from §5 Section 3 of the Will of February 18, 1917, because the authority here granted to the executors to delegate their respective powers to each other to any extent desired, can only apply *to such* executors as are in office, as are functioning, as are performing the duties of the office, but not to such as are eliminated, personally debarred by law.

(The case decided by the Supreme Court of the Reich in Z Volume 61 page 139 differs somewhat from the case to which this Opinion relates, insofar as in that case 1425 there was no question of the will of the testator differing from, being at variance with the measures taken to secure mutual agreement amongst the co-heirs, nor was there any concurrency of interests on the part of the executors).

The guarantee undertaken by the executors of the Sielcken estate to safeguard and indemnify the Z. E. G. against all future claims for compensation by Crossman & Sielcken is therefore invalid and of none effect, and constitutes a culpable violation of their official duties, because 1) they have acted in defiance of the express directions of the testator, and because 2), insofar as the executors Diederichsen and Georgius have taken part in that arrangement, it is a case of having to their own personal profit, disposed of part of the estate with obtaining valuable consideration in return.

1426 *Exhibit C Annexed to Answering Affidavit of Brainard Avery*

In re d)

The heiress Clara Schwarz-Sielcken is, in accordance with §2219 of the German Civil Code, entitled to compensation from the executors personally for culpable violation of their official duties, and legally authorized and justified in taking legal proceedings against them. She is especially entitled, in accordance with §2227, as an interested party, to apply to the Probate Court for the
1427 dismissal of the executors, as there is an "important reason" in the sense of the law entitling an heir to make such an application, to wit: culpable neglect of official duty (compare Commentary of Counsellors of the Supreme Court of the Reich on the German Civil Code Note 2 on §2227).

V.

I therefore, on the basis of the foregoing arguments, arrive at the following summarized conclusions:

a) The Will of February 18, 1917 must be interpreted,
1428 according to Art. 25 of Introductory Law to German Civil Code, in accordance with the laws of the United States of America. Insofar as the standards of concurrency in the latter contain a reference back to German law, the latter is applicable, as provided by Art. 27, Introductory Law, German Civil Code.

b) The same applies to the legal status and liability of the executors of the Sielcken estate.

c) The guarantee arrangement of August 3, 1918 is invalid and of none effect in German law, and constitutes a culpable infringement of the official duties imposed upon the executors.

d) The heiress Clara Schwarz-Sielcken is entitled to compensation from the executors personally, and fully entitled and competent to take legal action against them.

Berlin, April 10, 1928.

(Signed) NEUMANN
Reichswirtschaftsgerichtsrat

Answering Affidavit of Richard S. Doyle. 1429

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

JOHN S. SORENSON and THORLEIF S. B. NIELSEN, as the surviving partners of the firm of Crossman & Sielcken,
Plaintiffs,
against
HOWARD SUTHERLAND as Alien Property Custodian, FRANK WHITE as Treasurer of the United States, and ZENTRAL EINKAUFS-GESELLSCHAFT m. b. H.,
Defendants.

Equity No. 44-28. 1430

In Proceedings to Vacate Final Decree of December 30, 1929.

State of New Hampshire,
County of Hillsborough, ss:

Richard S. Doyle, first being duly sworn, deposes and says: 1431

That he is an attorney at law residing in Bethesda, Montgomery County, State of Maryland, and has for more than twelve years been engaged in the practice of law in the City of Washington, D. C., and now has his offices at 404 Transportation Building, in that City.

That during the years 1927 to 1930 inclusive, he was engaged in the practice of law in Washington with Charles D. Hamel, Esq. That he and Mr. Hamel were employed by and associated with the law firm of Barnes, Avery & Whiting of New York in representing Mrs. Clara Sielcken Schwarz and the estate of Herman Sielcken in claims filed with the Mixed Claims Commission—United States and Germany, Docket Nos. 8304 and 8305, the first involving the depreciation of funds of the firm of Crossman & Sielcken invested in German bonds and the second

1432 *Answering Affidavit of Richard S. Doyle.*

claim, representing the loss of certain cargoes of food stuffs shipped by Crossman & Sielcken to an agency of the German Government, through neutral ports, and seized by the British in 1915 and 1916.

Deponent and Mr. Hamel were so associated with Messrs. Barnes and Avery also in this suit instituted in the District Court of the United States for the Southern District of New York against the Alien Property Custodian, the Treasurer of the United States and the Zentral Einkaufs-Gesellschaft (hereinafter referred to as Z. E. G.) covering the amount of the second claim for loss of
1433 cargoes of food stuffs shipped to Z. E. G. in 1915 and 1916 and seized by the British. That suit was filed late in the fall of 1927 and some time after the Memorial for claim of the same amount had been filed with the Mixed Claims Commission.

Some time in February, 1928, deponent had a conference at the office of Mr. Martin of the Mixed Claims Commission with Dr. von der Decken of the office of the German Agent, Mixed Claims Commission, and learned that he had received a cable from Berlin asking him to investigate these claims and especially the suit above referred to. Dr. von der Decken stated that the German
1434 Government was very much disturbed about the proceedings having been instituted in Court on the same claim that was pending before the Commission; that they could not see wherein Crossman & Sielcken would benefit by a recovery in either of these actions in the United States because the Sielcken estate would be held liable under a certain indemnity agreement executed in Germany following the arbitration and settlement in 1918 of matters between Sielcken's estate and Z. E. G. He stated that he would like to avoid, if possible, the employment of counsel and continuance of unnecessary litigation in the United States and offered to furnish us copies of these documents, which he later did.

Deponent had a further conference with Dr. von der Decken in March, 1928, after the usual default order had been issued by the Court against Z. E. G. for failing to appear, and deponent assured Dr. von der Decken that

that order was a technical one, that we would not take advantage of the order, and would consent to the Court's issuing an order granting Z. E. G. permission to file an appearance after the conclusion of certain conferences in Berlin regarding the pending claims before the Mixed Claims Commission.

Deponent conferred from time to time during the year 1928, with Thomas E. Rhodes, Esq., a member of the Department of Justice, representing the Alien Property Custodian and the United States Treasurer in this suit, and advised him of the amount of the claim against the fund in the hands of the Alien Property Custodian, and 1436
the status of the pending claims before the Mixed Claims Commission, as well as the status, from time to time, of the attempted negotiations for settlement of those claims, and, in the fall of 1928, informed Mr. Rhodes that counsel had decided to proceed to trial of this suit against Z. E. G. on the claim for loss of the amount invested in the cargoes. Deponent, together with Mr. Earl B. Barnes, discussed with Mr. Rhodes the matter of entering into an agreed stipulation of many of the facts involved.

That under date of December 7, 1928, deponent addressed a letter to Mr. Rhodes explaining and accompanying a proposed stipulation of facts covering documentary 1437
proof, and advised him that it was the intention of counsel to press the case for an early trial, and stated that the documents to be covered by the stipulation were all a part of the record of the Mixed Claims Commission, as would be observed by the Memorial list 636, Docket No. 8305, and at the same time supplied Mr. Rhodes with copies of the said Memorial for claim, exhibits submitted therewith, together with the reply of the German Government recently filed in answer to that Memorial and all exhibits filed by it in support thereof.

In that letter, deponent also called to Mr. Rhodes' attention copy of an opinion rendered by Dr. Neumann, a Judge of the Commercial Court of the Reich, holding that the alleged compromise agreement relied on in the answer of the German Agent was void, which arbitration agreement, together with a certain indemnity agreement,

1438 *Answering Affidavit of Richard S. Doyle*

were included in the exhibits to the German answer and furnished to Mr. Rhodes, as previously stated.

That in May, 1929, counsel entered into a stipulation of the facts in agreement with Mr. Rhodes, in which it was stipulated and agreed that either party might offer in evidence in this suit any portions of the record of the Mixed Claims Commission in the claim heretofore referred to without further authentication. That stipulation was approved on May 24, 1919 by George R. Farnham, Assistant Attorney General.

1439 That in the summer of 1929, the Court, with the consent of plaintiffs, granted Z. E. G. permission to enter its appearance and file its answer in this suit, which it did on the 6th day of September, 1929; and thereafter counsel for Z. E. G. adopted and agreed to the said stipulation, with a slight amendment thereto.

Thereafter counsel for Z. E. G. apparently assumed the burden of the preparation and trial and defense of the said suit.

Deponent thereafter had very few conferences with Mr. Rhodes of the Department of Justice except from time to time pertaining to formal matters concerning the trial of the case.

1440 Mr. Rhodes from that time took the position that the United States was merely a trustee for the funds and that Z. E. G. had the burden of defending this litigation.

Deponent was present at the trial of the case before Judge Caffey in New York, Mr. Rhodes actively participated in the trial, representing the Alien Property Custodian, but the burden of the defense was assumed by counsel for Z. E. G., whose answer raised many points of defense that were not previously presented by the Department of Justice. It was a matter of comment among counsel for claimants that Arthur Garfield Hays, attorney for Z. E. G., made a very able defense of the claims against Z. E. G. and raised every possible point that was known.

That following the memorandum opinion of Judge Caffey, deponent participated, with Mr. Earl Barnes and Mr. Rhodes, in the preparation of the decree which was finally

approved by Mr. Rhodes for the Department of Justice after some controversy with reference to the rate of interest and the said decree was signed by Judge Caffey.

That deponent participated in numerous conferences during the years 1928 and 1929 with representatives of the Mixed Claims Commission with reference to possible negotiations for settlement of the claims pending before that Commission.

After this suit was filed against the Alien Property Custodian, it was generally conceded that there was no possibility of any settlement being consummated while this suit was pending. Deponent recalls that in June, 1442
1929, he recommended to Mr. Avery that we take Mr. von Lewinski, the German Agent, at his word and proceed with the trial of the Z. E. G. suit, he having stated to us in Mr. Martin's office that he would settle the claim when he knew the status of the Z. E. G. money; and that it was our opinion there was nothing to be done by either the German Agent or the American Agent until we had a decision in that case.

On June 20, 1929, deponent advised Mr. Avery as follows:

"He (Martin) agrees with us that if we are successful in the suit then we should seriously consider any offer of 1443
settlement that the Germans desire to submit, and if they fail to submit an offer, then we should proceed with our Wille investigation."

On December 23, 1929, deponent wrote Mr. Avery that

"He (Martin) seems to think there is a good possibility of settling the bond claim on the basis of depreciation of the securities. He wants to get a copy of the stenographic report of Judge Caffey's opinion just as soon as it is available."

On January 9, 1930, deponent took part in a conference at the Mixed Claims Commission in negotiation for settlement of all pending claims between the parties, which also involved a settlement of the indemnity agreement given by the German Executors of Hermann Sielcken's Estate,

and general releases from any and all parties connected with these matters.

That on January 15, 1930, deponent addressed a letter to Mr. H. H. Martin, commenting on his memorandum of the conference of January 9th, in which letter he stated as follows:

"I do not think I can add anything to what you have said except you recall Dr. von Lewinski stated it was impossible to secure a release from Wille on any of the claims against him.

1445 "I do not know that this is important, but it was one of the factors that prompted Mr. Avery later in the day to suggest to Mr. Abramson that some part of this fund should be set aside for a period of time in case Wille should make a claim against the Sielcken Estate."

On February 4, 1930, deponent addressed a letter to Mr. Avery, in which he advised him of the pending negotiations for settlement, as follows:

"The only information that Mr. Martin has is a word that von Lewinski let drop to Mr. Bonynge that the German Foreign Office is having trouble with Theodor Wille in the matter of this settlement. Mr. Martin does not
1446 know what phase of the matter they have taken up with Theodor Wille, but apparently there is some question being raised and perhaps the matter has been instituted by Wille."

On February 6, 1930, Mr. Avery replied to deponent's letter as follows:

"Referring to yours of the 4th.

"Yes, I attach a good deal of importance to von Lewinski's statement that there is trouble with Wille. I also take encouragement from the fact that the struggle seems to be on the German side, without as yet any effort to involve us. I have heard of no trace of Wille taking any interest in New York, in what is going on. You heard me ask von Lewinski if the German Agent had heard directly or indirectly of any claim from Wille and he replied he

had not. Hays told me the same several days ago. And yet, there is a working combination of Hays, Albert, *et al.*, which may yet and still be working."

On February 14, 1930, deponent addressed a letter to Mr. Avery, in which he made the following comment regarding the settlement of any claim made by Theodor Wille:

"I was with you and Mr. Alger in your room at the Willard when you reached the agreement with Abramson to create the trust fund of $200,000.

"It looks as though somebody tipped Wille off that 1448
there was a chance to get a little easy money, because undoubtedly some representatives of Z. E. G. are going to pay Wille a little bit of money rather than have the settlement fall through."

That on February 15, 1930, Mr. Avery replied to that letter, stating as follows:

"Replying to yours of 14th.

"No, I do not agree with you that anybody has tipped off Wille. I suggest the theory that when the corollary was added to our settlement that $100.00 (0) of Z. E. G. cold cash was to remain in New York for three years
Berlin is trying to settle the affair with Wille. I regard 1449
it as a good sign that we have not been called into the negotiation."

On March 17, 1930, deponent attended a conference at the Mixed Claims Commission, at which were present Messrs. Barnes, Avery, Alger and H. H. Martin representing the claimants, and Dr. von Lewinski, Dr. Roth, Mr. Hays and Mr. Abramson representing the German Government, at which it was agreed to accept an award on the Wille claim of $558,827.85 plus interest at 5 per cent per annum from April 1, 1918, thereon, with the understanding that claimants are furnished with a general release by the firm of Theodor Wille covering claims that this firm may have against them, particularly arising out of the Z. E. G. transaction; that the conference was

1450 *Answering Affidavit of Richard S. Doyle*

suspended and Mr. Avery and deponent met with Mr. Hays, Dr. von Lewinski, Dr. Roth and Mr. Abramson, with whom it was agreed by Mr. Hays that he would secure such general release as necessary from Theodor Wille and counsel for claimants agreed, subject to approval of their clients, that the plaintiffs would pay $50,000 of an amount of $100,000 which Hays would pay to Wille for such a general release of all claims Wille may have against the Sielcken estate, Mrs. Sielcken, the German executors, the Columbia Trust Company, and Crossman & Sielcken.

1451 That deponent conferred with Mr. Rhodes from time to time during January, February and March, 1930, with reference to the pending negotiations for settlement of said claims and that he informed Mr. Rhodes generally of the status of said negotiations and the necessity of settlement of the German indemnity agreement with said claims.

That on March 31, 1930, Rhodes advised deponent that he had prepared a report and recommendation on March 28th to the Solicitor General, that no appeal be taken from Judge Caffey's decision, which report had been approved by the Solicitor General.

1452 Deponent further says that neither he nor any of his associates contemplated at any time the recognition of any claim by any persons other than the plaintiffs herein and the American Executor of Sielcken to participate in any recovery under this judgment, but that in reaching the settlement of the awards before the Mixed Claim Commission and the indemnity agreement asserted by Z. E. G., it was, in view of the threats advanced in the name of Theodore Wille, essential to secure complete releases of all possible claims that Theodor Wille might, despite their previous disclaimers, attempt to assert.

This was the more necessary because the individual estate of Herman Sielcken in Germany was very large and subject to attack there. Z. E. G. and the firm of Wille were insisting on immediate cash settlement and as the funds recovered under the judgment herein were going to be immediately available (as otherwise the American

executor would probably have no available funds for several weeks to meet the required payments) it was agreed that the funds collected under the judgment herein should be used to conclude the settlement.

Payment of $50,000 to Mr. Hays to secure releases from Theodor Wille was not made on the strength of any claim of Theodor Wille to participate in this recovery, for no such claim was ever asserted to us, but simply as a means of securing the complete release from Theodor Wille that we felt it necessary to have in view of the indefinite threats advanced in the name of that firm, of which we knew no more than that Theodor Wille would make trouble in some way if this demand were not complied with. 1454

As the settlement, after making these payments, would still result in a recovery by the plaintiffs and the estate of a net sum in excess of what we had been authorized to settle for, we felt justified in accepting the settlement on this basis provided our demands for absolute protection of any further claims on the part of the firm of Theodor Wille were fully met.

Deponent says that he does not know and has never heard of Mr. Sterck, of the Department of Justice, but that to his personal knowledge he did not have at any time any personal connection with the claims before the Mixed Claims Commission or the suit in the Southern District of New York. 1455

Deponent has reviewed the facts set forth in the affidavit of Brainard Avery in this matter and where reference is made to facts and matters concerning deponent, they are true and correct.

RICHARD S. DOYLE.

Subscribed and sworn to before
me this 11th day of August, 1938.
Ivory C. Eaton,
Notary Public.
My Commission expires August 15th, 1940.
(Notarial Seal)

1456 **Answering Affidavit of Charles D. Hamel.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE IN PROCEEDING TO VACATE DECREE.] Equity No. 44-28

District of Columbia,
City of Washington, ss:

Charles D. Hamel, being first duly sworn, deposes and says:

That he has been a member of the bar since 1909;
1457 that from 1909 to 1914, he was engaged in legal work for the Department of the Interior of the United States and special assistant to the Attorney-General of the United States for the trial of cases in California and Wyoming from 1915 to 1922; from 1922 to 1924, deponent was Chairman of the Commission on Appeals and Review, and from 1924 until March 30, 1925, was a member and Chairman of the United States Board of Tax Appeals. And on retiring from the Board of Tax Appeals in 1925, deponent entered upon the active practice of the law in the City of Washington and ever since has been and is now engaged in the active practice of the law there.

1458 Deponent further says that he was retained in the matter of the claims of Crossman & Sielcken in Liquidation against the Zentral Einkaufsgesellschaft and Theodor Wille, which took the form of the present suit against the Zentral Einkaufsgesellschaft and the Treasurer of the United States and the Alien Property Custodian and the two Memorials filed on these respective claims in 1927 with the Mixed Claims Commission—United States and Germany. The details of these matters, so far as handled in Washington, were very largely handled by deponent's partner, Mr. Richard S. Doyle, but deponent kept in general touch with the same from the filing of the Memorials until the final adjustment of all these matters in 1930.

Deponent was advised by Mr. Doyle and by Mr. Avery of the attitude taken by Mr. Bonynge, the American Agent before the Mixed Claims Commission, and by

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Mr. H. H. Martin, his counsel, that the claims of Z.E.G. against the German Executors of Hermann Sielcken, deceased, for indemnity and any claims that Theodor Wille wished to assert against the firm of Crossman & Sielcken or against the estate of Herman Sielcken were matters extraneous to the jurisdiction of the Mixed Claims Commission and matters that the parties were at liberty to settle between themselves. Deponent thought this view sound.

At no time was there any suggestion by any of the counsel for the claimants or consideration by them of any claim nor did deponent hear of any claim being asserted that either Theodor Wille or Zentral Einkaufsgesellschaft was entitled to participate in any recovery either in this action or under the Mixed Claims Commission award. The thing that was compromised with Zentral Einkaufsgesellschaft was this dangerous claim to be entitled to indemnity from the German executors of Hermann Sielcken for any amount they were compelled to pay under the judgment in the present suit

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The funds recovered in this suit were used for making that adjustment because at the moment they were the only available ones for that purpose, although the estate had large funds coming in shortly.

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As for the claim of the firm of Theodor Wille that they should receive $50,000 from the Sielcken estate as a condition of the firm's executing the releases demanded, this was a last-minute claim advanced after the entry of judgment in this cause and after practical arrangements for complete adjustment of all the matters involved. It was not based on any special claim nor were counsel for the plaintiffs in this cause ever advised, so far as deponent could learn, on what basis that demand was advanced. It was, however, demanded and as the terms of the settlement agreed on were such as to permit of payment of that amount without reducing the net recovery of the firm of Crossman & Sielcken in Liquidation below the point that had been approved by Mrs. Sielcken Schwarz and the executor as a minimum for settlement, counsel for the plaintiffs agreed on making this payment as a means of getting the entire set-

1462 tlement through, which called for payments on the claim against Wille of over $700,000.

In view of the position taken by the American Agent and his counsel, which deponent believed to be sound, deponent saw no objection to making the settlement on this basis and it was accordingly so settled.

Deponent, however, calls particular attention to the fact that this suggestion of a payment to Theodor Wille was first suggested in February or March, 1930, more than a month after the entry of judgment in this cause.

CHARLES D. HAMEL.

1463 Subscribed and sworn to before me this
12th day of August, 1938.
Marvin S. Dooley,
Notary Public.
(Seal)

District of Columbia, ss: No. 96141

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Marvin S. Dooley, before whom the annexed instrument in writing was executed, and whose
1464 name is subscribed thereto, was at the time of signing the same a Notary Public in and for said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of lands, tenements, or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 12th day of August, A. D. 1938.

CHARLES E. STEWART,
Clerk.
By PHILIP M. HAMILTON,
Assistant Clerk.

(Seal)

Answering Affidavit of Frederick Wirth, Jr. 1465

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE IN PROCEEDING TO VACATE DECREE.]

German Reich,
State of Prussia,
City of Berlin, ss:
Consulate General of the
United States of America, 1466

In Proceedings to Vacate Decree of December 30, 1929.

Frederick Wirth, Jr., being duly sworn, deposes and says:

That he is a member of the New York Bar since the year 1906, with offices now located at Lutzowufer 17, Berlin, W. 35, Germany; that, in the course of certain conferences which took place at the Ministry for Foreign Affairs in the City of Berlin, Germany, in the months of April and May, 1928, concerning a matter in which the Zentral Einkaufsgesellschaft, m.b.H was 1467 involved, the representatives of the then German government raised the question of arbitration and confirmed the fact that certain arbitration proceedings which, during the war of 1914-1918, had already been partially carried out between the German executors of Hermann Sielcken and the Zentral Einkaufsgesellschaft, m.b.H all of which resulted in an agreement between the Zentral Einkaufsgesellschaft m. b. H., and the German Executors of Hermann Sielcken under the terms of which the said German Executors of Hermann Sielcken, although admitting their inability to bind Crossman & Sielcken, undertook that if Crossman & Sielcken subsequently recovered anything from the Zentral Einkaufsgellschaft cargoes account, as it was then known, the German Exexcutors of Hermann Sielcken would indemnify and hold harmless the Zentral Einkaufschaft from any such recovery.

1468 *Answering Affidavit of Frederick Wirth, Jr.*

Deponent further states that the representatives of the German government, during the course of these conferences produced and submitted to him many papers and documents on which they relied as showing partial arbitration and the fact that such agreement had been entered into, and they, also, at the same time, submitted a draft of the proposed answer of the German Government to the Memorial submitted on behalf of the Zentral Einkaufsgesellschaft; that one of the representatives of the German Government whose name,
1469 to the best of my recollection, was Zimmermann, proposed, as a compromise, that the Zentral Einkaufsgesellschaft should withhold any defense to a suit in any court in the United States and thus permit our clients to collect out of any funds held by the Treasurer of the United States, to keep such proceeds and to withdraw both memorials. Deponent stated at the time that he would take the proposal under advisement, whereupon the meeting was adjourned for several days.

Deponent further states that he then discussed the whole situation with Mr. Brainard Avery, the New York attorney for Mrs. Sielcken, and that they both agreed it would be quite impossible to accept or even
1470 consider the proposal set forth in the preceding paragraph of this affidavit for two reasons: firstly, because any such proposal was outside or went beyond our instructions and, secondly, by reason of the fact that we would be attempting, in considering such proposal, to deal with matters affecting the interests of the United States and its government which we could not, under any circumstances, take into consideration without first submitting such proposal or proposals to all counsel representing the United States as indicated in the memorials and in the pending suit.

Deponent further states that upon reconvening, he made a formal statement to the German representatives to the effect that neither he nor Mr. Avery aforementioned, could enter into any negotiations with regard

to the proposal referred to in the preceding paragraph for reasons already stated above.

Deponent further states that during a recess which then took place, Mr. von Lewinski, one of the representatives of the German Government, suggested to Mr. Avery, aforementioned, that as a practical solution of the questions involved, all matters be settled upon the following basis: That all defenses be spread upon the record, thereupon omitting certain items in the claim of Theodor Wille amounting to about five hundred thousand ($500,000) Dollars which Mr. von Lewinski claimed 1472
had been previously settled between Mrs. Sielcken, the widow, and Theodor Wille, and that the German and American Agents would agree on a compromise under the terms of which fifty (50) per cent of each of the claims presented by the Memorials would be awarded to the American claimants, and omitting entirely the said five hundred thousand ($500,000) Dollars. The said Mr. Avery then immediately told Mr. von Lewinski that he would discuss that suggestion with deponent, whereupon deponent and the said Mr. Avery discussed the whole matter at length, both deponent and the said Mr. Avery coming to the conclusion that it would be quite impossible to enter into any such pro- 1473
posed arrangement or even consider the possibility of carrying on any negotiations with respect thereto without first submitting it in all of its details to all counsel representing the United States in these matters.

Deponent further states that at the next meeting of the conference which took place shortly thereafter, deponent and the said Mr. Avery informed the German representatives, including Mr. von Lewinski, that it would be absolutely impossible for the representatives of the American claimants, that is to say, for Mr. Avery and deponent, to discuss or negotiate any further with respect to any such proposal as that mentioned in the last preceding paragraph of this affidavit, without first submitting the matter in all of its details to the various counsel representing the

1474 *Answering Affidavit of Frederick Wirth, Jr.*

United States both before the Mixed Claims Commission and in the United States District Court. Mr. Avery added, at the same time, that he would so submit the whole matter upon his return to the United States of America.

FREDERICK WIRTH, JR.

Subscribed and sworn to before me this
29th day of July, 1938.
Carlos J. Warner,
Consul of the United States of America.

1475

(American Consulate Seal
July 29, 1938, Berlin, Germany)

$2.00
Fee Stamp Cancelled
Service No. Fee $2. M 5.20
Item 31 Tariff of fees.

1476

Answering Affidavit of Leonard B. Smith. 1477

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE IN PROCEEDING TO VACATE DECREE.] Equity No. 44-28.

State of Connecticut,
County of Litchfield, ss:

Leonard B. Smith, being duly sworn, deposes and says:

That he is a member of the bar of the State of New 1478
York and has been for over thirty years last past.

Deponent ever since the early part of 1919 has been counsel to the Irving Trust Company, under its various names, as executor of Hermann Sielcken, deceased, advising generally as to the affairs of the estate and the liquidation by said Executor of the affairs of the firm of Crossman & Sielcken.

Deponent further says that at the time he became so connected as counsel with the estate, there appeared on the books of Crossman & Sielcken a charge against the firm of Theodor Wille of Hamburg, Germany, of one half the losses on certain cargoes known as the Copenhagen 1479
cargoes that had been seized by the British Admiralty and condemned by the British Prize Court in late 1917, for the price of which recovery was had in this suit under the decree of December 30, 1929 herein.

In 1922 there was being asserted against the estate of Hermann Sielcken two very heavy claims, one by the Woolson Spice Company for upwards of $1,000,000 and one by a Mrs. Blackwell for a very large amount; and for the protection of the executor and the estate and the claims of these creditors it seemed essential to assert such claims as the executor held as liquidator of the firm of Crossman & Sielcken against the firm of Theodor Wille, of Hamburg, Germany, by Memorials before the Mixed Claims Commission, one of which was for the recovery, if possible, from Germany of the other half of the loss on these seized cargoes.

1480 Mrs. Sielcken, at that time, objected to our asserting this claim, insisting that she had personally made a settlement with the firm of Theodor Wille in Germany of that claim and of all claims that firm had against the firm of Crossman & Sielcken. As counsel for the executor, I took the position that she, merely as residuary legatee of Sielcken's estate, had had no authority whatever to settle claims belonging to the firm of Crossman & Sielcken and that we could not recognize that settlement, especially in view of these heavy claims asserted against the estate (though disputed by the executor).

1481 Mr. Charles E. Hotchkiss, who was Mrs. Sielcken's personal counsel in this country, as I understood him, took the same view as I as to the invalidity of her attempt to settle partnership claims, and that it was essential for the protection of the estate and the executor that we file Memorials for these claims against Wille.

Mrs. Sielcken (then Mrs. Sielcken-Schwarz) finally sent to the Executor a letter dated December 11, 1922, reading as follows:

"New York December 11, 1922

Estate of Hermann Sielcken, deceased.

1482 Dear Sirs:

"Concerning the proposal made at the conference in your office held December 8th, that you, as the executor of Mr. Sielcken's will, should file a claim with the Mixed Commission (constituted under the recent treaty between the United States of America and Germany) to recover an item of approximately $94,000 and interest, appearing upon the dollar account on the books of Crossman & Sielcken as owing from the firm of Theodor Wille, Hamburg, I herewith advise you that as the residuary legatee under said will I have no desire that this item should be enforced as an obligation against said Theodor Wille. If, however, you deem it necessary, for your protection as such executor, to file such claim in order that no claims of creditors against the estate of Mr. Sielcken may be

prejudiced, I desire that when the estate is in such condition that you are charged with no duty to collect said item other than for my personal advantage as residuary legatee, you shall withdraw said claim and prosecute it no further.

I remain,
Very truly yours,

Clara Sielcken Schwarz

Columbia Trust Company, as
Executor of the Last Will and 1484
Testament of Hermann Sielcken, dec'd.
George E. Warren, Esq., Vice-Pres.,
60 Broadway,
New York City."

We then, in 1922, filed three Memorials, in one of which we asked recovery from Germany of the one half of the loss on the cargoes which we alleged had not been assumed by Wille. And in another recovery from Germany and Wille of the balance claimed against Wille including the half of the loss on the seized cargoes. Our evidence of such assumption by Wille was limited, but was necessarily relied on by us. 1485

During 1923 the Woolson Spice and Blackwell cases were both settled and disposed of. No other creditors of the Estate or firm were known, and all bequests other than the residuary bequest to Mrs. Sielcken had either been paid or had lapsed, so that she had become the sole person interested in the estate or in the assets of Crossman & Sielcken.

Under these circumstances her settlement with the firm of Theodor Wille was one that the executor was authorized to adopt; and it did so, in 1924, notifying the State Department that it withdrew the said 1922 Memorials, and jointly with Messrs. Sorenson and Nielsen (the surviving partners of the firm), charging off on the books of Crossman & Sielcken to Profit and Loss the claim against the firm of Theodor Wille that appeared on the

firm books of Crossman & Sielcken, thus adopting the settlement Mrs. Sielcken had previously made of that claim against the firm of Theodor Wille. This was done with her approval and consent.

Such claims against the firm of Theodor Wille were so charged off to Profit and Loss on the books of Crossman & Sielcken under date of February 28th, 1924, the balance so charged off amounting to $118,635.82. Thereafter no claim was made, as far as deponent heard, that the firm of Theodor Wille had any further liability to
1487 Crossman & Sielcken for losses sustained on the seized cargoes, or any interest of any character in the said cargoes or in any recovery therefor.

LEONARD B. SMITH

Subscribed and sworn to before me this
11th day of August, 1938.
Walter W. Collar, Notary Public.
My Commission Expires Feb. 1, 1939.
(Notarial Seal)

Answering Affidavit of William Abramson. 1489

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE IN PROCEEDING TO VACATE DECREE.] Equity No. 44-28.

State of New York,
County of New York, ss:

William Abramson, being duly sworn, says:

I am and for over twenty-five years have been a member of the New York Bar, and since 1920 a member of the Bar of this Court. 1490

Since 1928 I have been associated with Mr. Arthur Garfield Hays, who was the solicitor for the defendant Zentral Einkaufs-Gesellschaft in the above cause, and was his active assistant in the trial thereof.

On January 9, 1930, and on March 17, 1930, I was present, on Mr. Hays' behalf, at the conferences in Washington with Mr. Bonynge (the American Agent before the Mixed Claims Commission), and his counsel, Mr. H. H. Martin, and Dr. von Lewinski (the German Agent before that Commission), and his counsel Dr. Roth, and counsel for the above named plaintiffs (of which Mr. Martin preserved copious notes), at one of which Mr. Hays was also present, over the payment of the judgment herein and the settlement of the claim against Zentral Einkaufs-Gesellschaft under the Memorial of the above named plaintiffs and the American executor of Hermann Sielcken, deceased, against Germany and Zentral Einkaufs-Gesellschaft, which was predicated on the same claim for payment for seized cargoes as was this suit, and the claim of Zentral Einkaufs-Gesellschaft against the German executors of Hermann Sielcken for indemnity from them for any recovery against the Zentral Einkaufs-Gesellschaft on the claims advanced against it in this suit and in the Memorial against it. 1491

1492 *Answering Affidavit of William Abramson*

At the aforesaid conferences the settlement of the claim of the two plaintiffs and the American executor of Sielcken presented by the Memorial before the Commission against Germany and the firm of Theodor Wille was also discussed.

On or about March 24, 1930, and while these negotiations were still formally incomplete, though settlement had practically been attained, I was in Washington and called on Mr. Thomas E. Rhodes, who had been the trial counsel for the Alien Property Custodian and the United States Treasurer on the trial of this cause. I told Mr.
1493 Rhodes that we had had two conferences at the Mixed Claims Commission's offices in connection with the settlement of the Crossman and Sielcken claims involved in this suit and in the proceedings before the Mixed Claims Commission, and the indemnity agreement aforesaid; and that we had reached a settlement thereof. I also advised him that the attorneys for the claimants in the Wille Memorial had likewise reached a settlement. I further advised Mr. Rhodes that as a result of the settlement of the Zentral Einkaufs-Gesellschaft claims, we were not going to appeal from the decree entered herein. Mr. Rhodes then dictated to one of his own stenographers
1494 the short form letter addressed to the Attorney General (marked for Mr. Rhodes' attention), of date March 24, 1930, of which a photostatic copy is annexed to the moving papers. At Mr. Rhodes' request I then signed that letter in Mr. Hays' name and handed it to Mr. Rhodes.

Mr. Rhodes at that time knew of the claim we had been making on behalf of the Zentral Einkaufs-Gesellschaft based on the indemnity agreement with which he was familiar, as it was one of the papers we had filed with the Mixed Claims Commission which Mr. Rhodes had joined us and the attorneys for the plaintiffs in stipulating that they might any of them be put in evidence on the trial of this suit without further authentication. And I believe he knew that part of the settlement we had arranged was that a considerable payment was to be made to the Zentral Einkaufs-Gesellschaft in compromise of

that claim for indemnity, though I do not recall that I discussed any of the details of the settlement with him.

WM. ABRAMSON

Subscribed and sworn to before me this
5th day of August, 1938.
Frederick Griffin,
Notary Public,
New York County.

Seal
N. Y. Co. Clks. No. 382, Reg. No. 0G450.
Kings Co. Clks. No. 166, Reg. No. 397. 1496
Bronx Co. Clks. No. 38, Reg. No. 182G40.
Queens Co. Clks. No. 846, Reg. No. 3304.
Commission expires March 30, 1940.

1497

1498 **Answering Affidavit of George O. Castell.**

[Same Title in Proceeding to Vacate Decree.] Equity No. 44-28.

State of New York,
County of New York, ss:

George O. Castell, being duly sworn, deposes and says:

That he is a member of the bar of the State of New York and has been since 1913.

That in 1927 deponent was a member of the firm of Barnes, Avery & Whiting, and, under instructions from
1499 Mr. Avery of that firm, went to Germany to see what could be found in the way of facts and evidence connected with the claims asserted in the two Memorials filed by the firm of Crossman & Sielcken with the Mixed Claims Commission, United States and Germany, against Germany impleaded with Zentral Einkaufsgesellschaft and Germany impleaded with the firm of Theodor Wille.

Deponent went first to Hamburg and there had brief conferences with Mr. Lorenz of the firm of Theodor Wille and with Dr. Baur, a German attorney, who had formerly been connected with Dr. Ami Kaemmerer, who had acted as counsel for the German Executors of Hermann Sielcken in connection with the partially completed arbitra-
1500 tion between the German executors and the Zentral Einkaufsgesellschaft and an agreement between them.

Dr. Kaemmerer had died before deponent came to Hamburg.

After spending a short time in Hamburg, deponent went to Baden-Baden and there found among the files of the late Hermann Sielcken in his library there the key documents which formed the basis of the claim later filed with the Mixed Claims Commission and still later asserted in this suit, that the Reichseinkauf had been the original contracting party for the cargoes involved in this suit and that its interest therein and liability therefor had been assumed by the Zentral Einkaufsgesellschaft.

After securing these documents in Baden-Baden, deponent returned to Hamburg and there, at that time, was shown by Dr. Baur the files of Dr. Kaemmerer in connection with the said incomplete arbitration and the

so-called indemnity agreement executed by the German Executors of Sielcken to the Zentral Einkaufsgesellschaft.

Deponent promptly advised Mr. Avery in New York by letter of his discoveries, and shortly thereafter Mr. Avery came to Hamburg and met deponent there.

On these two visits to Hamburg, deponent talked with both Mr. Lorenz and Dr. Baur, and no suggestion was ever made by any one there that the firm of Theodor Wille had any claim against the firm of Crossman & Sielcken of any character.

On Mr. Avery's arrival in Hamburg deponent explained what had previously been written to Mr. Avery, showing him all the papers he had been able to find, and explaining to him in detail all he knew concerning the incomplete arbitration and the indemnity agreement. 1502

Mr. Avery promptly raised the question of the possible invalidity of the so-called indemnity agreement by reason of the dual position in connection with it occupied by the German executors.

Deponent spent many weeks in Germany examining all possible records connected with these claims that deponent could get in touch with and securing copies of them as far as possible, and deponent returned to the United States with Mr. Avery about the end of September, 1927. 1503

Deponent further says that he continued to be a partner of Mr. Avery until after 1930.

During the period from 1927 to 1930, deponent repeatedly talked with Mr. Barnes (who is now dead), who spoke to deponent several times of his having been to Washington to see Mr. Thomas E. Rhodes there in connection with the above entitled suit.

GEORGE O. CASTELL.

Subscribed and sworn to before me this
25th day of July, 1938.
Florence D. Joyce,
Notary Public,
New York County.
N. Y. Co. Clk's No. 127, Reg. No. 9J113.
Bronx Co. Clk's No. 16, Reg. No. 42J30.
Commission expires March 30, 1939.
(Notarial Seal)

1504 **Answering Affidavit of George E. Warren.**

[Same Title in Proceeding to Vacate Decree.] Equity No. 44-28.

State of New York,
County of New York, ss:

George E. Warren, being duly sworn, deposes and says:

That he resides at Stamford, in the State of Connecticut.

That he is, and ever since April 1st, 1925, has been, a vice president of the Chase National Bank of the City
1505 of New York.

That prior to becoming connected with the Chase National Bank in April, 1925, deponent had been a vice president of the Columbia Trust Company (now the Irving Trust Company), for over eight years, up to the middle of March, 1925.

That from the 30th of November, 1917, until deponent's leaving the Irving Trust Company in March, 1925, deponent had been in direct charge of the relations of the Trust Company with the firm of Crossman & Sielcken and the estate of Hermann Sielcken, first from November 30, 1917, until about January 23, 1918, as representative of
1506 that Trust Company as Agent of the Alien Property Custodian, when that agency came to an end, and that from December 27, 1917, until the 26th day of January, 1918, deponent was in active charge for said Columbia Trust Company of the estate of Hermann Sielcken, deceased, while said Columbia Trust Company was temporary administrator of the estate of Hermann Sielcken, deceased.

That on the 26th day of January, 1918, the will of said Hermann Sielcken, deceased (of which a copy is annexed to the moving papers of the Attorney General herein as Exhibit B thereof), was duly admitted to probate by the Surrogate of New York County, and the said Columbia Trust Company received letters as executor of the said will of said Sielcken and immediately took over all the American property belonging to his estate.

as such executor including all his interest in the firm of Crossman & Sielcken.

That thereafter deponent remained in prime charge for the Columbia Trust Company under its various names of said estate of Hermann Sielcken until deponent resigned from the Trust Company in March, 1925.

Throughout that entire period from November 30, 1917, to deponent's resignation in March, 1925, deponent had primary charge of all the affairs relating to said estate of Hermann Sielcken and said partnership of Crossman & Sielcken, which was liquidated by the executor with the 1508
aid and assistance of Messrs. Sorenson and Nielsen as directed in the said will of said Hermann Sielcken, deceased.

Throughout that entire period from November 30, 1917, until deponent's resignation from the Trust Company in March, 1925, deponent was the officer of said Trust Company having the entire charge of the affairs of said firm of Crossman & Sielcken and of the estate of said Hermann Sielcken, deceased, subject only to the supervision of Hon. Willard V. King, the president of said Trust Company.

Deponent further says that the matter of the affairs of Crossman & Sielcken first came into his hands on the 1509
30th day of November, 1917, through the appointment of the Columbia Trust Company by the Alien Property Custodian to supervise, as his representative, the liquidation of said firm of Crossman & Sielcken. Such appointment was contained in the letter of November 30, 1917, of which a copy is annexed to the moving papers of the Attorney General of the United States herein as Exhibit G of the moving affidavit of Mr. Sterck. Enclosed in said letter were two copies of the license of November 16, 1917, issued to Sorenson and Nielsen above named by the War Trade Board, dated November 16, 1917, of which a copy is annexed to the said moving papers of the Attorney General as Exhibit F thereof, and also notice of the appointment of Mr. Bower.

That on November 30, 1917, deponent, as Vice-President of the Columbia Trust Company, acknowledged re-

ceipt of said letter from the Alien Property Custodian's Manager, Joseph A. Bower, Esq., by a letter of the same date, of which a copy is annexed to the said moving papers as Exhibit H4 thereof.

Pursuant to that authority, deponent, on behalf of the Columbia Trust Company, promptly took over possession of the negotiable securities in possession of the firm and deposited them in the vaults of the Trust Company, opening an account therefor, headed: "A. Mitchell Palmer, Custodian, for Crossman & Sielcken Liquidation
1511 Investment Account." A photographic copy of the said ledger account is hereto annexed, marked Exhibit A, and hereby made a part hereof.

Upon the turning over of possession of the assets of Crossman & Sielcken to the Columbia Trust Company as temporary administrator and as Executor of Hermann Sielcken, the title of the said account was changed by striking out the words "A. Mitchell Palmer, Custodian for" and replacing the same with the words "Est. Hermann Sielcken." Thereafter the account was carried in the name "Crossman & Sielcken in Liquidation, Investment Account, Est. Hermann Sielcken," as more fully appears by the copy of the first page of the new account,
1512 of which a photostatic copy is hereto annexed, marked Exhibit B, and the account of said securities was thereafter carried on under the latter title.

Just before said appointment of November 30, 1917, a rumor had reached the officers of the Columbia Trust Company that Sielcken had died in Germany and in the files of the Trust Company I find a letter from the President of the Company, Mr. King, to Mr. Bower, Business Manager of the Alien Property Custodian, dated November 27, 1917, advising him of the receipt of this information, but that it was unofficial, of which a copy is hereto annexed, marked Exhibit C. At the time of writing that letter, the Trust Company made an application to the Secretary of State to obtain information as to the possible death of said Hermann Sielcken, and his death on October 8, 1917, was subsequently confirmed by a telegram from the Department of State.

On or about the 17th day of December, 1917, the Trust Company received from Messrs. Sorenson and Nielsen (Hermann Sielcken's former partners) definite information of the death of said Hermann Sielcken on October 8, 1917, and thereupon the Trust Company obtained from the former partners of said Sielcken, Messrs. Sorenson and Nielsen, the said will of said Hermann Sielcken, deceased, and delivered the same to the late Eugene Smith of New York City as attorney for the Trust Company to present the same for probate to the Surrogate of New York County. The same was promptly presented for 1514
probate, but the necessity of publishing citation required delay of a month or more and for the purpose of being able to handle any questions coming up with regard to the estate in the matter, the Trust Company caused application to be made to the Surrogate for its own appointment as temporary administrator pending probate of the will.

A memorandum that such application for temporary letters of administration was granted was handed down by the Surrogate on or about the 26th day of December, 1917, and the same day deponent sent to the Alien Property Custodian, the letter suggesting that the entire property of the estate and that of the firm of Crossman & 1515
Sielcken should be left to the temporary administrator of Hermann Sielcken, and in succession to his executor, to administer, pointing out that Sielcken had died on October 8th, 1917 (which was before the appointment of any Alien Property Custodian under the Trading With the Enemy Act, which became a law only on the 6th of October, 1917). No seizure of either the assets of the firm of Crossman & Sielcken or of the assets of Hermann Sielcken had been made by the Custodian. Nor had either said Sielcken or said firm been declared an enemy by the Custodian at any time prior to the death of said Hermann Sielcken. A true and correct copy of such letter is hereto annexed, marked Exhibit D, and hereby made a part of this affidavit.

Deponent further says that on the 20th day of December, 1917, deponent had a personal conference with Mr.

Joseph A. Bower, Business Manager of the Alien Property Custodian, of which deponent at the time made and filed a minute, of which minute a true and correct copy is hereto annexed, marked Exhibit E and hereby made a part of this affidavit.

Deponent further says that on or about the 14th day of January, 1918, the Columbia Trust Company received from Mr. Bower, the Business Manager of the Alien Property Custodian, a letter approving the taking over of all the property of the firm of Crossman & Sielcken
1517 and all the American estate of Hermann Sielcken, deceased, as temporary administrator, and later as executor, of which letter a true and correct copy is hereto annexed, marked Exhibit F, and hereby made a part of this affidavit.

Pursuant to the suggestion contained in that letter, Exhibit F, application was immediately made to the War Trade Board, which, on the 21st day of January, 1918, issued two permits, one to the Columbia Trust Company as temporary administrator and as executor of Hermann Sielcken, the other to Messrs. Sorenson and Nielsen, true and correct copies of which licenses so issued by the War Trade Board are hereto annexed, marked respective-
1518 ly Exhibits G and H, and hereby made parts of this affidavit.

That on the 26th day of January, 1918, letters testamentary were issued to the Columbia Trust Company under the said will of said Hermann Sielcken, deceased, a copy of which letters is annexed to the moving papers herein of the Attorney General as Exhibit J; and all the property of the estate of Hermann Sielcken and of the firm of Crossman & Sielcken was at once taken over by the Columbia Trust Company as such executor and the agency of the Columbia Trust Company for the Alien Property Custodian was terminated, its fees fixed by the Alien Property Custodian at $7,500, and that sum paid to the Columbia Trust Company out of the assets of Crossman & Sielcken on the 25th day of January, 1918, and from the 25th day of January, 1918, the Trust Com-

pany ceased to hold the position of Agent for the Alien Property Custodian in holding possession of any assets of the firm of Crossman & Sielcken.

Deponent further says that after November 30, 1918, two reports were prepared by the firm of Arthur Young & Co., Certified Public Accountants, one of the firm's condition on September 30, 1917 and the other of an extension thereof, so as to show the condition of the firm on October 8, 1917, the day of Sielcken's death; copies of which two reports are hereto annexed, marked Exhibits I and J respectively, and hereby made parts of this affidavit. 1520

Deponent further says that in the early part of the year 1918 there was considerable correspondence between the Trust Company, conducted on its part by deponent, and the representatives of the Alien Property Custodian and others, which very clearly shows that at that time the property of the firm of Crossman & Sielcken and the property of said Hermann Sielcken was held by the executor of Hermann Sielcken and not by the Alien Property Custodian. Among such letters are letters from deponent of February 4, 1918, to Mr. H. M. Kilbourn, the Assistant Business Manager of the New York Office of the Alien Property Custodian (Mr. Bower's assistant); 1521 of June 14, 1918 to Mr. Bower, the General Business Manager of the Alien Property Custodian; and of July 16, 1918 to Mr. Morgan M. Mann, who was the counsel to the Alien Property Custodian in charge of his relations with the Sielcken Estate; and also letters, one from said Bower to deponent of April 16, 1918; one of June 3, 1918 from F. J. Horn, who was Director, Bureau of Trusts, to the Columbia Trust Company; one of June 19, 1918 from said Bower to deponent; one of July 16, 1918 from said Morgan M. Mann to deponent. True and correct copies of said nine several letters are hereto annexed, marked Exhibit K, and hereby made parts of this affidavit.

Deponent further says that by the end of the summer of 1918 the Columbia Trust Company as such executor

1522 *Answering Affidavit of George E. Warren*

of said Hermann Sielcken, deceased, had realized a large amount of cash for the estate of Hermann Sielcken from said partnership, which the executor was liquidating, amounting to over One million Dollars; and in October 1918 the Alien Property Custodian caused to be served on the Columbia Trust Company a demand for the interests of Clara Sielcken, the widow and residuary legatee of said Hermann Sielcken, deceased, in his estate, and also the interests of various other persons therein, copy of which demand was served on deponent as Vice-President of the Columbia Trust Company on the 25th day
1523 of October, 1918; copy of which is hereto annexed, marked Exhibit L, and hereby made a part of this affidavit.

Deponent further says that said Exhibit L is the only demand ever made by the Alien Property Custodian on the Columbia Trust Company for any part of the estate of Hermann Sielcken or for any of the property of the firm of Crossman & Sielcken, nor did the Alien Property Custodian ever advise the Columbia Trust Company that any one connected with the estate or with the firm was regarded as an enemy except only as shown by the documents hereto annexed.

Deponent further says that reports were regularly
1524 made to the Alien Property Custodian of the progress of the administration of the affairs of Crossman & Sielcken as requested by him in the letter of November 30, 1917, so that he might know what was going on, and this demand, Exhibit L, is the only demand made.

Deponent further says that after coming into charge of the estate of Hermann Sielcken and being put in supervision of the liquidation of the firm of Crossman & Sielcken, deponent learned that on or about the 25th day of October 1917 Sorenson and Nielsen, in ignorance of the death of said Hermann Sielcken, had subscribed, in the name of the firm, for $100,000 of First Liberty Bonds and had sent a check for $100,000 to Washington in connection with such subscription, and that in some way (deponent has never been able to learn just how) the Alien Property Custodian took this money and deposited either the money or the bonds so subscribed for in a

trust in his office, which he denominated as Trust No. 1; and in March 1921 the Columbia Trust Company filed with the Alien Property Custodian a claim for this $100,000, of which a copy is annexed to the Attorney General's moving papers as Exhibit K thereof, and shortly thereafter the brief application to amend the said claim, which is also part of said Exhibit K.

Deponent further says that in October 1919 Mrs. Clara Sielcken, the widow of said Hermann Sielcken, deceased, arrived in New York and took up her residence here; that she made an effort, as deponent was advised at the time, to have the Alien Property Custodian release from 1526
seizures he had made, not only some of her individual property but also her interest in the estate of said Hermann Sielcken which had been seized by the Alien Property Custodian in the hands of this executor, as per the said notice so served on the Columbia Trust Company on the 25th of October, 1918, Exhibit L hereof.

That deponent was informed at the time that some time in 1920 she had made a formal application to the Custodian for the return of such property of hers, and that the Custodian had insisted on her securing some record of the naturalization of Hermann Sielcken as an American citizen, and that she had brought an action in the 1527
Superior Court of California to re-establish the record of naturalization of said Hermann Sielcken, which it was claimed had been destroyed in the San Francisco fire and earthquake; that in that action the Alien Property Custodian had intervened and opposed the application, and that judgment was rendered in that suit re-establishing the record of the naturalization of said Hermann Sielcken. A copy of said judgment was delivered to the Trust Company early in 1921. A copy of said judgment is hereto annexed, marked Exhibit M, and hereby made a part of this affidavit.

That thereupon deponent, on behalf of the Trust Company, filed the claim, Exhibit K of the Attorney General's papers, and thereafter, on or about the 29th day of March, 1921 the Alien Property Custodian required of the Columbia Trust Company as such executor a re-

lease, as a condition of surrendering the property of the estate of Hermann Sielcken which he had seized.

In that connection deponent calls particular attention to the letter from F. J. Horn to the Columbia Trust Company of date June 3, 1918, pointing out how that $100,000 should be treated, a plan to which the Columbia Trust Company as executor acceded. Copy of such letter is hereto annexed as part of Exhibit K.

As against the said sum of $100,000, the Alien Property Custodian claimed charges of $5,648.70. Deponent
1529 submitted this claim to Mrs. Sielcken and she approved of the claim so made by the Custodian for such disbursements, and thereupon deponent executed the desired release and sent the same to the Alien Property Custodian. Annexed hereto and made a part hereof are copies of the release so executed; of the approval of Mrs. Sielcken of the deduction of the fees claimed by the Alien Property Custodian; of the statement of account of said Trust No. 1 rendered by the Alien Property Custodian; of the letter sent by deponent, enclosing such release, to the Alien Property Custodian; of the letter of April 14, 1921 enclosing the check for $94,351.30 to the Columbia Trust Company; of the letter of June 1, 1921 from the Assist-
1530 ant Trust Officer of the Columbia Trust Company, Mr. S. M. Spedon, to Mrs. Clara Sielcken, advising her that the amount of such check received from the Alien Property Custodian had been deposited to her personal credit, which are marked Exhibit N, and hereby made parts of this affidavit.

Deponent further says that, to wit, on the 3rd day of April, 1921, deponent, on behalf of said Columbia Trust Company as such executor received from the Alien Property Custodian the letter of April 2nd, 1921, of which a copy is hereto annexed, marked Exhibit O, and hereby made a part of this affidavit.

Deponent further says that in the year 1919 the Columbia Trust Company had filed its first account as executor of the estate of Hermann Sielcken, deceased, which showed all the transactions on the part of the executor and others in charge of the estate of Sielcken and of the

firm of Crossman & Sielcken from Sielcken's death up to the appointment of the Columbia Trust Company as executor, and a citation was duly issued to the Alien Property Custodian as a person claiming an interest in the estate to attend said account, and the said Alien Property Custodian appeared upon the said accounting in the Surrogate's Court and filed objections to certain payments made to Thorleif S. B. Nielsen and John S. Sorenson in settlement of their shares of the profits of Crossman & Sielcken, a settlement which had been made by express authority of the Alien Property Custodian in December 1917. 1532

Deponent is informed and believes that while that accounting was still pending the Alien Property took an appeal from the decree of the California Superior Court re-establishing the record of naturalization of said Hermann Sielcken. Said judgment was affirmed by the Appellate Court, and thereupon the Alien Property Custodian, with the approval of the Attorney General of the United States, on or about the 2nd day of April, 1921, surrendered all claim to the interest of Mrs. Clara Sielcken in the estate of said Hermann Sielcken and, as already stated, notified the Columbia Trust Company that it might make distribution out of the estate to Mrs. 1533 Sielcken as if no demand for her share of the estate had ever been made.

Shortly thereafter, the Alien Property Custodian by its attorney, Morgan M. Mann, Esq., formally withdrew his objection to the first account of the executor; and on July 7th, 1921 a decree approving the account of the Executor was duly entered in said Surrogate's Court for New York County, approving and settling such first account of the executor. A copy of such decree is hereto annexed, marked Exhibit P, and hereby made a part of this affidavit.

Deponent further says that the Irving Trust Company had nothing to do whatever with the application of Mrs. Sielcken Schwarz for the return of her property or her interest in the estate of Hermann Sielcken, deceased, and

1534 *Answering Affidavit of George E. Warren*

was an entire stranger to each of said proceedings except only as it received from the attorneys of said Clara Sielcken Schwarz a copy of the judgment of the California Court and the notice from the Alien Property Custodian that Mrs. Sielcken's interest in the estate of Hermann Sielcken, deceased, had been released by him with the approval of the Attorney General of the United States from the seizure he had previously made thereof, by virtue of the demand, Exhibit L hereto annexed.

1535 Deponent further says that on or about the 28th day of March, 1922 the Columbia Trust Company (now the Irving Trust Company) filed in the office of the Surrogate for New York County its account of its proceedings as executor from the 28th day of February 1919 (the date to which it had previously accounted by its first account) down to and including the 31st day of December, 1921. In that account the executor charged itself with $4,734,059.92 cash received, of which $309,195.12 was income, and credited itself with cash disbursed amounting to $4,406,495.28, leaving a balance of cash then in its hands of $327,564.64; and showing assets remaining on hand, including the said item of cash of $327,564.64, amounting in all to $2,290,439.26.

1536 That no claim against the Zentral Einkaufs-Gesellschaft m. b. H. was shown among the assets of the firm, either in the reports of Arthur Young & Company hereto annexed or in either the first or second account of the executor, nor did the return of said sum of $100,000 (less the sum of $5,648.70) returned by the Alien Property Custodian as above mentioned, appear in that account, because the said $100,000 was treated as a payment to Clara Sielcken Schwarz as residuary legatee and turned over to her as a distribution made during the period of the first account in which that payment appeared. This was done in accordance with the said suggestion of Mr. Horn of the Alien Property Custodian's office, Exhibit K hereof.

That the Alien Property Custodian was duly served with citation upon the said accounting, but failed to enter

any appearance upon the said accounting, and the said account was in all respects approved by decree of the Surrogate of date July 11, 1922. A copy of the final decree is hereto annexed, marked Exhibit Q, and hereby made a part of this affidavit.

In that second account the executor showed distribution of cash paid to legatees under the will of $1,549,425 to Clara Sielcken, $50,000 to John S. Sorenson and $50,000 to Thorleif S. B. Nielsen.

The said second account showed that the German Executors had executed an instrument, filed with the account, by which they had waived payment to themselves 1538
of the net estate in the hands of the American executor, as provided by the will, and had authorized and directed the American executor to pay direct to the residuary legatee and the legatees named in the Second, Fourth, and Fifth Articles of the Will, and that pursuant to that instrument payments to the residuary legatee had been made to her direct instead of to the foreign executors.

Said account further showed that the Josephinen Heim, the legatee named in the Fifth Article of the Will, had executed an instrument renouncing its legacy, which instrument was filed therewith, and that said legacy had fallen into the residuary estate.

The said account further showed that the Alien Property Custodian had served upon the executor a notice 1539
(Exhibit L above set forth), demanding the interest in the estate of the City of Baden Baden, Germany, and that the executor had not paid that legacy, but still held the same.

Said account further showed that the legacies given by the Third Article of the will had lapsed, as none of those legatees were in the employ of decedent on April 1, 1917.

Deponent further says that thereafter the City of Baden Baden failed to comply with the conditions of the bequest to it and, with the approval of the Alien Property Custodian, expressly renounced the same, and that the same lapsed and fell into the residuary estate by reason

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of the City of Baden Baden's failure to comply with the conditions of the legacy to it and its express renunciation thereof.

Said decree (Exhibit Q) was subsequently modified by decrees of December 16, 1922 and March 27, 1923 in regard only to features of said decree (Exhibit Q) restraining the distribution of further assets of the estate on account of pending litigation, which had meantime been settled and disposed of.

On or about the 30th day of January, 1925, the said Irving Trust Company (under its then name of Irving
1541 Bank-Columbia Trust Company) as executor of the will of said Sielcken, filed its third account of its proceedings as such executor of Hermann Sielcken, deceased, from the 31st day of December, 1921 down to and including the 14th day of January, 1925. By the said third account, it showed on hand a balance of assets of $304,753.67 (which included $93,109.99 of cash on hand), subject, however, to the executor's commissions, which were computed and adjudged and decreed to be $24,835.23 by the decree of the Surrogate approving and settling said account of the 9th day of February, 1925. And about three months thereafter this deponent ceased to be connected
1542 with the said executor and upon ceasing his connection with the Irving Trust Company, ceased to have anything to do with the administration of the estate of Hermann Sielcken, deceased.

During all the time that deponent was in charge of the administrator of the estate of said Hermann Sielcken and of the liquidation of the firm of Crossman & Sielcken neither deponent nor the said executor ever received any information of the existence of any claim either belonging to the said Sielcken or to the firm of Crossman & Sielcken against the Zentral Einkaufs Gesellschaft m. b. H., the above named defendant, and no mention of the existence of any such claim was made to deponent by any one connected with the firm of Crossman & Sielcken, nor was the existence of any such claim against the Zentral Einkaufs Gesellschaft shown anywhere on the books or in the files of the firm of Crossman & Sielcken, and

the existence of any such claim was entirely unknown to the executor.

Deponent further says that pursuant to the provisions of the will of said Hermann Sielcken, so admitted to probate by the Surrogate for New York County, the said Irving Trust Company as such executor employed John S. Sorenson and Thorleif S. B. Nielsen to assist it as far as possible in the liquidation of the firm affairs, paying them $1,000 apiece for their services as such assistants to the executor in liquidation of the firm, as had been directed by said Sielcken in his will.

1544

That in connection with such liquidation of the affairs of the said firm of Crossman & Sielcken deponent on behalf of the Columbia Trust Company (now Irving Trust Company) as such executor, sent to said Sorenson and said Nielsen on or about the 14th day of June, 1918, a letter, dated June 14, 1918, of which a true and correct copy is hereto annexed, marked Exhibit R, and hereby made a part of this affidavit.

Deponent further says that he never at any time had any other connection than as above stated with the bringing of the above entitled suit in the United States District Court by said Sorenson and Nielsen against the above named defendants, nor with the conduct of said suit in any way.

1545

I find in the files of the Executor two other letters of importance here:

1. Copy of a letter sent by me to Mr. Bower, the Manager of the Business Department of the Alien Property Custodian of date December 17th, 1917, of which copy is hereto annexed, marked Exhibit S, and hereby made a part of this affidavit.

2. An official letter from Mr. H. B. Caton, who was Director of the Bureau of Trusts of the Alien Property Custodian, to the Columbia Trust Company (now Irving Trust Company) of date April 1, 1921, which was received by me personally as Vice President in charge of the Sielcken estate on or about April 2nd, 1921, copy of

which is hereto annexed, marked Exhibit T, and is hereby made part of this affidavit.

Deponent further says that the proceeding by the Trust Company to recover the sum of $100,000 which had so come into the hands of the Alien Property Custodian, included in Trust No. 1, was wholly independent of the application made by Mrs. Sielcken to recover her interest in the property and was not predicated on any proceeding in connection with her application, but was presented entirely by deponent on behalf of the executor by the papers hereto annexed and the return of said
1547 $100,000 and of the release of any other claim that the Alien Property Custodian asserted to the estate of Hermann Sielcken, as shown by Exhibit K of the motion papers of the Attorney General and Exhibits N, N(1), N(2), N(3), N(4), N(5) and N(6), and O hereto annexed, was made without any reference to the claim Mrs. Sielcken had advanced in connection with her own application.

Deponent further says that at all times during his connection with the Columbia Trust Company, either under that name or its later names, the said corporation was a corporation duly organized and incorporated under the laws of the State of New York, and that at all said
1548 times its principal place of business was in the County of New York, in the State of New York.

G. E. WARREN.

Sworn to before me this
28th day of June, 1938.
James S. Ogsbury, Jr.
Notary Public.
Nassau Co., N. Y. No. 1870.
Certificate filed in N. Y. Co. No. 180.
N. Y. County Register's No. 0-0-105.
My Commission expires March 30, 1940.

1549

1550

Exhibit A Annexed to Answering Affidavit of George E. Warren.

Photostatic copy of Ledger account A. Mitchell Palmer, Custodian, for Crossman & Sielcken Liquidation investment account.

1551

TITLE OF TRU... (Est Herman Lillicker) Romine & Lillicker

NOW HELD

REMARKS

10420

DATE 3/10 Liquidated (Receipt)

COMMISSION

RECEIVED						DELIVERED						
						PAR VALUE	RATE	ANNUAL INCOME	INT. OR DIV. DUE	PRINCIPAL DUE		
		U.S. Liberty Loan Bonds				1000	3½			6/15/47		
Dec 7 1917	2	4th 1st 2nd 3rd	2 Bonds 1 Coupon		2							
		Note - Not out										
		Alexander Kerr	Cert Reg Stk				3	15	Semi Jan 1	1/1/18		
Dec 7 1917		4th & 1st Conv. 4th & 2nd		4500	1	May 5 1919	Sold Hallo & Illegible Co.		Strays	4500		
		Alexander Kerr	2nd Reg Stk				2		Semi Jan 2	1/1/18		
Dec 7 1917		4th & 1st Conv. 4th & 2nd		1000	1	May 5 1919	4th & 1st Conv. 4th & 2nd		Wallach Strays	1000		
May 2 1919		To Emma Wallach		500	1		To Hallo & Illegible			500		
				1500								
		Kansas City Gas Co.	1st Mtg				4	120	Jan	1/1/18		
				15000	1	Feb 6 1918	Sold		99.739	10000		
						Mar 27			.955	7000		
						25			.959	1000		
						May 8			.962½	2000		
							15000	G.J.L. Co	.1091	15000		
		Bethlehem Steel Co	Cert Temp Reg Dep 20 Yr				Coll	5	400	Jan	1/1/18	
Dec 7 1917		7% Pfd		5000	1	Dec 14 1917	Sold					
						20						
						21						
						26						
		Southern Pacific Co	1st Mtg				4	1000	Jan	1/1/18		
Dec 7 1917		4th & 1st Conv.		5000	1	Dec 28 1917	Sold					
						29						
						Jan 2 1918						
						7						
		City of Reg.	Coupon Stock				4½	10	Mar 5	1/1/18		
Dec 7 1917		7% Pfd		6000	1	Dec 19 1917	Sold					
		Colorado Industrial Co.	5% 20 Yr. Reg				5	100	Jan			
Dec 7 1917		2nd 1st		5000	1	Mar 19 1918	Sold	10000				
						19		7000				
						25		5000				
						Apr 1		5000				

10420

EXHIBIT A

DATE

COMMISSION

RECEIVED				DELIVERED							
					PAR VALUE	RATE	ANNUAL INCOME	INT. OR DIV. DUE		PRINCIPAL DUE	BALANCE
						5	105.	Jan 1		5/1/16	
	2100	Jan	7	1918	Sold.				3965	2100	
						4	100.				
		May	20	1918	Sold						

EXHIBIT A, CONT'D.

1558

1559

Exhibit B Annexed to Answering Affidavit of George E. Warren.

Photostatic copy of first page of account carried in name Crossman & Sielcken in Liquidation Investment Account, Est. Herman Sielcken.

1560

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TITLE OF TRUST Crossman & Sillcken in Liquidation — PAGE 371

HOW HELD (Est Herman Sillcken) Investment A/c — COMMISSION

REMARKS

RECEIVED										DELIVERED									
			U S A Certs of Indebtedness dep 4 E								PAR VALUE	RATE	ANNUAL INCOME	INT. DUE PAY.		PRINCIPAL DUE			
												4½				11/6/19			
Sept	26	1918	dep 4E 2 @ 500 1 @ 100 1 @ 50 1 @ 20 1 @ 10					Jan	16	1919	To F.R.B. for Redemption		1000	00				
			U S Certs of Indebtedness dep 4 E									4½				11/7/19			
Sept	27	1918	Cert 4½		31	1500	000	-	Dec	20	1918	To Fed Res Bk for Redemption		1771	30	1500	00		
			U S Victory L.L. 3½ %s									3½	3½% 3½%		Jan 6th	4920			
July	7	1921	11 1066					July	14	1921	Sold - C.J. Childs & Co					4939	50		
								July	21	1921	" " " "					6926	25		

1564 **Exhibit C Annexed to Answering Affidavit of George E. Warren.**

COLUMBIA TRUST COMPANY
SIXTY BROADWAY
NEW YORK

November 27, 1917.

Hermann Sielcken Estate.

Dear Sir:

1565 We have been unofficially advised of the death of Mr. Hermann Sielcken, and we are on notice of the fact he left a will naming the Columbia Trust Company as Executor. We have instituted an inquiry through the State Department to ascertain the truth of the report of Mr. Sielcken's death and meanwhile we write to you as representative of the Alien Property Custodian because we understand that you contemplate the immediate sale of the good will and investments of Mr. Sielcken.

We realize, of course, your anxiety to clean up matters of that sort, but in this case we must ask you to favor us with a short delay, at least in the matter of selling the investments; because if the report of Mr.
1566 Sielcken's death should be verified, we should be under the duty of offering the will for probate and doing everything proper to protect the corpus of the estate.

Yours faithfully,

(sgd) WILLARD V. KING
President.

Mr. J. A. Bower,
c/o Liberty National Bank,
120 Broadway,
New York City.

H.

Exhibit D Annexed to Answering Affidavit of George E. Warren. 1567

December 26, 1917.

Alien Property Custodian,
Business Department.
#111 Broadway,
New York City.

Attention of Mr. H. O. Kilbourn.

Dear Mr. Kilbourn:

Confirming our conversation with regard to the case 1568
of CROSSMAN & SIELCKEN, I write to advise that Columbia Trust Company has filed for probate the original Will of Hermann Sielcken in which Columbia Trust Company is named as Executor, a copy of the Will being enclosed herewith. Mr. Sielcken died on October 8th last in Baden Baden, Germany.

In order to expedite the settlement of the estate, we have also applied for temporary administration which may be issued to us within a day or two. In this connection, we would suggest that the Alien Property Custodian give his consent to the appointment of Columbia Trust Company as Executor, and to the turning over to 1569
the temporary administrator or executor of the assets belonging to the late Hermann Sielcken. If we are permitted to settle the estate, the firm of Crossman & Sielcken can be liquidated, we believe, with greater facility and can still be under the supervision of your Department.

We suggest that the executor be permitted to carry out the liquidation, bring the necessary transfer tax proceedings to determine the New York State tax on the estate and to determine the Federal estate tax. After the expiration of the statutory period for the filing of claims, which can be expedited by our advertising for a period of six months, the executor can account to the Surrogate's Court and ask for an Order to pay over to the Alien Property Custodian such part of the estate as may be found to be the property of alien enemies.

We believe that a liquidation of the affairs of Crossman & Sielcken by an executor would work more ad-

1570 *Exhibit D Annexed to Answering Affidavit of George E. Warren*

vantageously to all parties concerned, especially in view of the fact that it will determine exactly what part of the estate belongs to American citizens and what part of it belongs to alien enemies. It would also be greatly simplified if the executor could immediately take possession and liquidate the estate, using as a basis the figures prepared by Arthur Young & Company in their report for the Alien Property Custodian.

If this meets with your approval, upon our qualifying as temporary administrator or executor, we will ask you
1571 to authorize us to proceed to liquidate the estate in that capacity.

I should be glad to talk the matter over with your counsel if you care to have me do so.

Respectfully yours,

G. E. WARREN
Vice President.

P. S. I have just been informed that the Surrogate has signed the order appointing Columbia Trust Co. Temporary Adm. G. E. W.

1572

Exhibit E Annexed to Answering Affidavit of George E. Warren. 1573

CROSSMAN & SIELCKEN

Memorandum of Conference with Mr. Joseph A. Bower, representing Alien Property Custodian, Thursday, December 20th, 1917 at 11:20 A. M,

Mr. Bower in a conversation, approved of the following:

1st. That we accept the statement of Arthur Young & Company prepared as of September 30th for the purpose of settling the interest of the surviving partners in 1574
the earnings for the nine months, period ending on that day, and pay them accordingly.

2nd. That the several department heads who were receiving a percentage of earnings in addition to salary, be paid the amount due them, as shown by the statement of September 30th.

3rd. That the bonuses paid June 30th last to the employees in addition to their salaries, be paid for the six months' period ending December 30th.

Mr. Bower expressed his approval of our application for the appointment of an Executor, and also for our 1575
application as temporary Administrator.

G. E. WARREN

Vice-President

gew.dw

1576 **Exhibit F Annexed to Answering Affidavit of George E. Warren.**

In replying address only
The Alien Property Custodian
and Refer to No.

ALIEN PROPERTY CUSTODIAN
Sixteenth and P Streets NW.
Washington, D. C.

New York, January 14, 1918.

1577 CROSSMAN & SIELCKEN.

Mr. G. E. Warren, V. P.,
Columbia Trust Co.,
60 Broadway, N. Y. C.

Dear Sir:

I acknowledge receipt of a certificate evidencing your appointment as temporary administrator of the Estate of Herman Sielcken.

Under date of November 30, 1917, you were appointed my Agent for the purpose of supervising the liquidation
1578 of the interest of Herman Sielcken in the firm of Crossman & Sielcken under license ET-344, issued by the War Trade Board.

In view of the death of Mr. Sielcken, and your appointment as temporary administrator and nomination as executor of his will, you are hereby authorized as such temporary administrator, and executor when letters are issued to you, to take possession of all of the assets of the late Herman Sielcken as of October 8, 1917, the date of his death, and to account for them thereafter in due course of administration. In liquidating the interest of the late Herman Sielcken in the firm of Crossman & Sielcken you will, of course, pay the necessary expenses incident thereto and the debts owing by the firm, the estate being the sole owner thereof.

It will, however, be necessary for you to obtain a license from the War Trade Board authorizing you to

Exhibit H Annexed to Answering Affidavit of George E. Warren 1579

take over and manage the estate of said Sielcken as such administrator and executor.

A statement of the assets and liabilities of the firm of Crossman & Sielcken as of September 30, 1917, was prepared by Arthur Young & Co. under the direction of this Department which statement, for the purposes of liquidation, is satisfactory to this Department. This statement is to be continued down to October 8, 1917, the date of Mr. Sielcken's death, for the purpose of establishing the value of the estate taken over by you.

1580

The settlement made with the surviving partners, whose interest terminated upon the dissolution of the firm, is approved.

Yours very truly,

J. A. BOWER, Mgr.
Genl. Business Dept.

Exhibit G Annexed to Answering Affidavit of George E. Warren.

1581

This is a duplicate of the license printed herein as Exhibit E annexed to the affidavit of Vincent L. Banker (pages 287 to 288).

Exhibit H Annexed to Answering Affidavit of George E. Warren.

This is a duplicate of the license printed herein as Exhibit D annexed to the affidavit of Vincent L. Banker (pages 285 to 286).

1582 **Exhibit I Annexed to Answering Affidavit of George E. Warren.**

CROSSMAN AND SIELCKEN

REPORT

SUBMITTING

FINAL BALANCE SHEET AS AT SEPTEMBER 30, 1917

1583 AND

INCOME ACCOUNT

FOR THE NINE MONTHS ENDING SEPTEMBER 30, 1917

ARTHUR YOUNG & COMPANY
Accontants and Auditors
New York City

ARTHUR YOUNG & COMPANY
1584 Accountants and Auditors

New York Partners
Arthur Young, C. P. A. (Ill)
William Sutherland C. P. A. (Wis)
A. J. Baxter F. C. A. C. P. A. (NY)
L. J. Nolan C. P. A. (Conn)
D. D. F. Mackenzie C. A. C. P. A. (Ill)

Chicago-105 So. LaSalle Street
New York-71 Broadway
Kansas City-1106 Commerce Building
Milwaukee-1503 First National Bank Building
Cable Address Arthyoung

71 Broadway, (Empire Building)
New York December 13, 1917.

Messrs. Crossman and Sielcken,
90 Wall Street,
New York, N. Y.

Exhibit I Annexed to Answering Affidavit of George E. Warren 1585

Dear Sirs:

We have examined the books and records of the firm of Crossman and Sielcken and have prepared therefrom the accompanying final statements of assets and Liabilities as at September 30, 1917 and Operating and Profit and Loss Account for the nine months ended that date. These statements are supported by the revised schedules numbered I-XI. submitted herewith.

The following condensed statement shows the differences between the tentative and final Balance Sheets at September 30, 1917: 1586

Assets	Tentative Balance Sheet	Final Balance Sheet	Increase Decrease	
Current Assets:				
Cash	$ 277,473.72	$ 277,473.72	———	
Marketable Securities	504,260.75	504,260.75	———	
Collateral Loans Receivable	1,497,966.99	1,444,724.17	53,242.82	
Notes Receivable	348,154.68	348,154.68	———	1587
Accounts Receivable	1,824,330.94	1,934,227.97	109,897.03	
Inventories	215,696.26	208,206.35	7,489.91	
Total Current Assets	$4,667.883.34	$4,717,047.64	$ 49,164.30	
Due from Concerns in Enemy Countries	510,340.35	664,167.03	153,826.68	
Stocks and Bonds	1,125,127.72	1,114,112.76	11,014.96	
Copenhagen Shipments in Prize Courts	480,413.93	———	480,413.93	
Deferred Charges	61,321.45	———	61,321.45	
Total Assets	$6,845,086.79	$6,495,327.43	$349,759.36	

Exhibit I Annexed to Answering Affidavit of George E. Warren

Liabilities	Tentative Balance Sheet	Final Balance Sheet	Increase Decrease
Current Liabilities:			
Loans and Notes Payable	$ 710,000.00	$ 710,000.00	———
Accounts payable	176,095.16	167,296.19	8,798.97
Total Current Liabilities	$ 886,095.16	$ 877,296.19	8,798.97
Due to Concerns in Enemy Countries	75,534.47	33,249.71	42,284.76
Reserves:			
Loss on Prize Court Shipments	480,413.93	———	480,413.93
Excess Profits Tax	58,724.00	40,012.00	18,712.00
Total Liabilities	$1,500,767.56	$ 950,557.90	$550,209.66
Net worth (Excluding Goodwill)	$5,344,319.23	$5,544,769.53	$200,450.30
Divisible as under:			
Herman Sielcken	$5,271,889.95	$5,409,967.22	$138,077.27
Thorleif Nielsen	39,589.00	70,918.10	31,329.10
John Sorenson	32,840,28	63,884.21	31,043.93
	$5,344,319.23	$5,544,769.53	$200,450.30

Exhibit I Annexed to Answering Affidavit of George E. Warren 1591

We have the following comments to make on the changes as shown in the above statement.

ASSETS

Collateral Loans Receivable Decrease $53,242.82

This decrease is due to a sale of rubber on account of Paul Hilken. This sale was made prior to September 30, 1917, but the account sales was not rendered till late in October.

1592

Accounts Receivable Increase $109,897.03

This is composed of commission and interest charges which could not readily be assessed at date of our tentative report.

Inventories Decrease $7,489.91

This is due to a delivery of nitrates to the United States Army which was not billed till after our preliminary figures were submitted.

Due from Concerns in Enemy Countries 1593 Increase $153,826.68

This increase is accounted for by a charge to Theodor Wille of Hamburg, Germany of his proportion of the loss on shipments of foodstuffs to Copenhagen which shipments were commandeered by the British Admiralty. Complete details of these shipments were given in our previous report.

Stocks and Bonds Decrease $11,014.96

This decrease is due to the fact that the firm was obligated to sell back to the United States Lloyds the two certificates held by them at the price fixed by that Company.

Deferred Charges Decrease $61,321.45

These charges have either been written off to Profit and Loss or charged against Accounts Receivable depending on the nature of each item.

1594 *Exhibit I Annexed to Answering Affidavit of George E. Warren*

LIABILITIES

Accounts Payable Decrease $ 8,798.97

Due to Concerns in Enemy Countries Decrease $42,284.76

These decreases are accounted for by commission charges etc., which could not be put on the books at date of our last examination.

Reserve for Loss on Prize Court Shipments Decrease $480,413.93

1595

The losses on the shipments in the British Prize Court having now been ascertained and apportioned between Theodor Wille and Crossman and Sielcken, the reserve for these losses is no longer necessary. The firm's proportion of the loss has been charged against the reserve and the balance over reserved against this loss credited to Profit and Loss Account.

Reserve for Excess Profits Tax Decrease $18,712.00

We have reduced this figure by eliminating the net income tax figure which will have to be paid by the partners distinct from the business.

1596

Net Worth Increase $200,450.30

The increase of $200,450.30 in the Net Worth for the period is due primarily to the writing back to Profit and Loss of $127,634.80 being the amount over reserved for loss on shipments held in the British Prize Court. This amount had previously been charged against profits pending the final decision of the British Prize Court. The balance $72,815.50 consists of interest on Accounts Receivable and commissions on account Sales. These figures were not available at the time the tentative statements were prepared.

Yours very truly,

ARTHUR YOUNG & CO.

CROSSMAN & SIELCKEN in Liqn.
By Thorleif S. B. Nielsen

Exhibit I Annexed to Answering Affidavit of George E. Warren 1597

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CROSSMAN & SIELCKEN
in Liqn.
By THORLEIF S. B. NIELSEN

Exhibit I Annexed to Answering Affidavit of George E. Warren

BALANCE SHEET

September 30, 1917

ASSETS

CURRENT ASSETS:		
Cash on Hand and in Banks (Schedule I)		277,473.72
Marketable Securities (Schedule II)		504,260.75
Collateral Loans Receivable (Schedule III)		1,444,724.17
Notes Receivable (Schedule IV)		348,154.68
Accounts Receivable (Schedule V):		
Due from Domestic, Allied and Neutral Concerns	$1,939,496.95	
Less: Reserve for Doubtful Accounts	5,268.98	1,934,227.97
Inventories (Schedule VI)		208,206.35
Total Current Assets		$4,717,047.64
DUE FROM CONCERNS IN ENEMY COUNTRIES (Schedule V)		884,167.03
STOCKS AND BONDS (Schedule VII)		1,114,112.76
		$6,495,327.43

LIABILITIES AND CAPITAL

CURRENT LIABILITIES:		
Loans and Notes Payable (Schedule VIII)		$ 710,000.00
Accounts Payable (Schedule IX):		
Due to Domestic, Allied and Neutral Concerns		167,296.19
Total Current Liabilities		$ 877,296.19
DUE TO CONCERNS IN ENEMY COUNTRIES (Schedule IX)		33,249.71
RESERVES:		
For Excess Profits Tax (Schedule X)		40,012.00
PARTNERS' ACCOUNTS (Schedule XI):		
Herman Sielcken	$5,409,967.22	
Thorleif Nielsen	70,918.10	
John Sorenson	63,884.21	5,544,769.53
		$6,495,327.43

CROSSMAN & SIELCKEN in Liqn.
By. THORLEIF S. B. NIELSEN

Exhibit I Annexed to Answering Affidavit of George E. Warren 1603

PROFIT AND LOSS ACCOUNT FOR NINE MONTHS ENDED SEPTEMBER 30, 1917

GROSS INCOME:		
General Commissions	$355,125.82	
Commissions on Exports	97,011.87	
Commissions on Imports	42,548.99	
Interest	275,927.99	$ 770,614.67
		1604
Deduct:		
Administrative & General Expenses		100,428.53
Net Income		$ 670,186.14
Add:		
Appreciation less depreciation in values of Investments	$411,420.63	
Proportion of Loss on Prize Court shipments borne by Theodor Wille-Hamburg, Germany	127,634.18	1605
Appreciation in value of Exchange Memberships	8,325.00	547,379.81
		$1,217,565.95
Deduct:		
Other Charges:		
Provision for Excess Profits Tax	$ 40,012.00	
Interest on Herman Sielcken's Capital Account	211,759.74	251,771.74
Net Profit for Period		$ 965,794.21

1606 *Exhibit I Annexed to Answering Affidavit of George E. Warren*

Divisible as follows:

Herman Sielcken		
75%	$724,345.65	
Thorlief Nielsen		
12 1/2%	120,724.28	
John Sorenson		
12 1/2%	120,724.28	965,794.21

1607 CROSSMAN & SIELCKEN in Liqn.
By THORLEIF S. B. NIELSEN

Schedule I.

CASH IN BANKS AND ON HAND—SEPTEMBER 30, 1917

CASH IN BANKS:

Equitable Trust Company	$ 27,216.33	
National City Bank	25,874.87	
Chase National Bank	4,651.18	
Guaranty Trust Company	11,489.47	
1608 Corn Exchange Bank	3,561.19	
Hanover National Bank	110,794.64	
Columbia Trust Company	89,386.04	
		$272,973.72

CASH ON HAND:

Notes	$3,526.00		
Coin	13.22	$ 3,539.22	
Vouchers:			
John Sorenson	$ 700.43		
M. Watkins	5.35		
A. Peiser	65.00		
Mrs. Blackwell	40.00		
Sundries $2 Drawer	150.00	960.78	4,500.00
Total, carried to Balance Sheet, Exhibit A			$277,473.72

CROSSMAN & SIELCKEN in Liqn.
By THORLEIF S. B. NIELSEN

Exhibit I Annexed to Answering Affidavit of George E. Warren

1609

SCHEDULE II.

MARKETABLE SECURITIES—SEPTEMBER 30, 1917

Number Held	Name of Company	Par Value	Cost		Present Market or Book Value	
BONDS						
6	New York City 4 1/2s due 1962	1000	$ 6,015.00		$ 5,917.50	
35	Kansas City Terminal Railway 4s due 1960	1000	33,250.00		28,656.25	
42	Colorado Industrial Company 5s due 1934	1000	31,500.00		32,550.00	
25	Southern Pacific Refunding 4s due 1955	1000	23,737.50		21,062.50	
46	New York Central Debenture 4s due 1934	1000	41,084.50		37,720.00	
30	United States Liberty Bonds 3 1/2s	1000	30,000.00	$165,587.00	30,000.00	$155,906.25
STOCKS						
20	American Sugar Refining Company	100	$ 2,240.00		$ 2,225.00	
1000	Brooklyn Union Gas Company	100	145,125.00		100,000.00	
642	Columbia Trust Company	100	127,422.20		----	
200	do Benefit Certificates	--	3,500.00		189,180.00	
144	General Development Company	25	1,905.12		5,472.00	
200	Kansas City Southern Railroad Company, Preferred	100	13,064.47		10,425.00	
300	do Common	100	11,934.50		5,437.50	
300	Lawyers Title Insurance and Trust Company	100	93,750.00		30,300.00	
100	Miami Copper Company	5	2,250.00		3,425.00	
5	Pittsburgh Plate Glass Company, Common	100	500.00		500.00	
	Atlantic Mutual Insurance Company, Scrip	--	1,390.00	403,081.29	1,390.00	343,354.50
				$568,668.29		
	TOTAL, carried to Balance Sheet, Exhibit A					$504,260.75

1610

CROSSMAN & SIELCKEN
in Liqn.
By THORLEIF S. B. NIELSEN

1611

1612

Exhibit I Annexed to Answering Affidavit of George E. Warren

SCHEDULE III

COLLATERAL LOANS RECEIVABLE SEPTEMBER 30, 1917

Name	Location	Nature of Collateral Held	Value of Collateral	Indebtedness	Remarks
Paul G. L. Hilken	Baltimore, Md.	Rubber stored in Warehouses	$ 875,001.70	$ 776,232.01	Value of collateral taken at market value
A. Heussler	do	Coffee stored in Warehouses	115,911.45	127,795.94	Value of collateral taken at appraisal value
Louis Seitz	do	do	47,127.55	47,127.55	Certificate of transfer equal to loan. Market value of collateral in excess.
Mitchell Bros.	do	do	268,559.70	260,363.49	Value of collateral taken at market value
S. D. Stanatopulo	do	do	20,286.67	20,286.67	Certificate of transfer equal to loan Market value of collateral in excess
J. D. Pickslay	do	Fidelity and Phoenix Insurance Company Stock Certificates	2,000.00	2,316.29	
1613 G. Rohrecke	do	Miami Copper Company and Atchison Topeka & Santa Fe Stock Certificates	16,000.00	10,547.05	Stock taken at market value
J. W. Koehrman	Toledo, Ohio	The Woolson Spice Company Stock Certificates	55,000.00	32,045.13	Stock taken at $1,100 per share (present net worth)
F. H. Biggs	do	do	27,500.00	16,022.57	do do
T. Nielsen	New York City	do	27,500.00	15,984.64	do do
J. S. Sorenson	do	do	27,500.00	15,984.64	do do
Frank A. Vanderlip	do	do	55,000.00	32,018.19	do do
W. Shotten Coffee Company	St. Louis, Mo.	Real Estate and Insurance Policies	61,000.00	88,000.00	Appraisal value for Real Estate. Insurance policies taken at cash surrender value.
			$1,618,387.07		
			1,444,724.17		
			$ 173,662.90		Excess collateral over Loans
	TOTAL, carried to Balance Sheet, Exhibit A			$1,444,724.17	

1614 Of the above Loans S. D. Stanatopulo, Frank A. Vanderlip and Louis Seitz have since been entirely paid up.

in Liqn.
CROSSMAN & SIELCKEN

By THORLEIF S. B. NIELSEN

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Exhibit I Annexed to Answering Affidavit of George E. Warren

NOTES RECEIVABLE—SEPTEMBER 30, 1917

Maker	Demand	Due Date	Amount	
AMERICAN:				
G. S. Kutz	$1,900.00			
The City Hall Realty Co.		June 20, 1918	$ 7,000.00	
do		June 20, 1919	7,000.00	
do		June 20, 1920	7,000.00	
do		June 20, 1921	7,000.00	
do		June 20, 1922	72,000.00	$100,000.00
The Heekin Can Company		Jan. 7, 1918	$ 25,000.00	
do		Jan. 14, 1918	25,000.00	
do		Jan. 21, 1918	25,000.00	
do		Jan. 28, 1918	25,000.00	
do		Feb. 4, 1918	25,000.00	
do		Feb. 11, 1918	25,000.00	
do		Feb. 18, 1918	25,000.00	
do		Feb. 25, 1918	25,000.00	200,000.00
F. I. DuPont de Nemours & Co.		Oct. 8, 1917	$ 2,380.00	
do		Oct. 19, 1917	1,288.52	
do		Oct. 19, 1917	8,600.00	12,268.52
Braunling Coffee Company		Nov. 5, 1917		250.00
National City Bank of New York		Dec. 18, 1917		1,792.14
Pickslay, J. D.	2,300.00			
	$4,200.00			$314,310.66

1618 *Exhibit I Annexed to Answering Affidavit of George E. Warren*

DUE FROM CONCERNS IN NEUTRAL AND ALLIED COUNTRIES:			
Vorwerk & Company, Valparaiso	Oct. 31, 1917	$ 3,191.25	
Thomas Drysdale & Co., Buenos Aires	Nov. 25, 1917	20,000.00	
London and Brazilian Bank, Ltd., London	Dec. 5, 1917	4,578.77	
Edward Schluter & Co., London	Dec. 10, 1917	1,874.00	$ 29,644.02

1619

SUMMARY

Demand Notes Receivable		$ 4,200.00
Time Notes Receivable:		
Concerns in the United States	$314,310.66	
Concerns in Neutral and Allied Countries	29,644.02	343,954.68
Total, Carried to Balance Sheet, Exhibit A		$348,154.68

1620 CROSSMAN & SIELCKEN in Liqn.
By THORLEIF S. B. NIELSEN

Exhibit 1 Annexed to Answering Affidavit of George E. Warren 1621

ACCOUNTS RECEIVABLE—SEPTEMBER 30, 1917

DUE FROM CONCERNS IN NEUTRAL AND ALLIED COUNTRIES:

J. G. Aranjo	Manaos, Brazil	$ 43,251.25	
A. Monrao & Company	Para, "	9,283.31	
Bromberg & Company	Porto Allegri, Brazil	8,709.19	
Thos. Drysdale & Company	Buenos Aires, Argentina	32,615.49	
Franklin Veras & Company	Parnahyba, Brazil	477.66	
Fonck & Company	Valparaiso, Chili	486.25	1622
Hime & Company	Rio de Janeiro, Brazil	17.00	
Guinle & Company	Rio de Janeiro, Brazil	47,459.85	
Gustav Graeff	Para, Brazil	2,438.11	
John Lumsden	Valparaiso, Chili	27.98	
H. Theo Muller	Porto Allegri, Brazil	5,924.64	
Leite Jr. & Company	Para, Brazil	716.09	
Leonel de Carvalho	Rio de Janeiro, Brazil	50.23	
Louis Hermanny & Company	Rio de Janeiro, Brazil	88,380.88	
Merrelles & Company	Marahan, Brazil	1,280.31	
Pires Franco & Company.	Para, Brazil	1,949.89	
Rieckmann & Company	Sao Paulo, Brazil	26,775.87	
Ricardo Schulz & Company	Valparaiso, Chili	11,059.03	
Robert Pusterla & Company	Buenos Aires, Argentina	13,523.05	1623
Semper & Company	Manaos, Brazil	1,212.17	
Stubenrauch & Company	Punta Arenas, Patagonia	3,951.85	
Vorwerk & Company	Valparaiso, Chili	28,856.37	
Jose Novita & Amado	Sao Paulo, Brazil	7,164.75	
Mostardeira Irmao	Rio de Janeiro, Brazil	3.58	
Piza, Piza & Company	Panama, Panama	330.81	
Bianchi & Hamres	Rio de Janeiro, Brazil	11.05	
Jorge, Barry & Hermanes	Buenos Aires, Argentina	17.72	
Hermann Lundgren	Pernambuco, Brazil	39.09	
Ferreira Costa & Company	Para, Brazil	11.05	
Ferreira Comes & Company	Para, Brazil	7.76	
Cereija & Company	Montevideo, Uraguay	1,263.08	
Richard Lodders	Para, Brazil	34.75	
Guerin & Company	Montevideo, Uraguay	534.73	
Ferreira & Irmar	Maranhan, Brazil	115.39	
R. F. G. Jaacke	Buenos Aires, Argentina	25.73	
Salvo Camponias & Company	Montevideo, Uraguay	1,038.85	

Exhibit I. Annexed to Answering Affidavit of George E. Warren

	A. Lisboa & Company	Rio de Janeiro, Brazil	16.15
	Pereira Mattos & Company	Maranhan, Brazil	356.38
	Ferreira de Oliveira & Sobrinho	Para, Brazil	190.56
	Eugenio Barth & Company	Montevideo, Uraguay	3.95
	Arzeno & Daruspe	Buenos Aires, Argentina	1,298.67
	Ramon Jove	Barcelona, Spain	5.33
	Barrera & Company	Havana, Cuba	78.60
	A. Acosta & Company	Havana, Cuba	112.50
1625	Broqua & Schollberg	Montevideo, Uraguay	519.07
	Anezin Hermanos & Company	Buenos Aires, Argentina	13.48
	Juan Marabotto & Company	Montevideo, Uraguay	183.65
	Escola de Fugenharria	Bahia, Brazil	8.20
	Cia Argentina Instrumental Cientifico	Buenos Aires, Argentina	12.48
	Dr. Joas Noronha Santos	Bahia, Brazil	5.25
	Eduardo Germain	Valparaiso, Chili	908.60
	Jacob Walter & Company	London and Rio de Janeiro	1,040.00
	Bromberg & Company	Porto Allegri, Brazil	341.97
	Warburg & Goldschmidt	Buenos Aires, Argentina	585.88
		Carried Forward	$344,725.53

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CROSSMAN & SIELCKEN in Liqn.
By THORLEIF S. B. NIELSEN

Exhibit I Annexed to Answering Affidavit of George E. Warren 1627

ACCOUNTS RECEIVABLE—SEPTEMBER 30, 1917 (Cont'd).

Due From Concerns in Neutral and Allied Countries (Cont'd):

	Brought Forward	$344,725.53	
A. A. Barhati & Company	Naples, Italy	18.00	
A. F. DeSouza & Company	Para, Brazil	111.29	
Banco de Columbia	Bogota, Columbia	6.00	1628
Lewers & Cooke, Ltd.	Honolulu, H. I.	11,846.25	
Honolulu Rapid Transit & Land Company	Honolulu, H. I.	21,355.79	
Milton E. Springer & Company	Manila, P. I.	10.53	
Wm. Rummell	Sydney, Australia	129.97	
J. H. Butler & Company	Melbourne, Australia	37.65	
John Danks & Sons	Melbourne, Australia	398.98	
Commonwealth Typewriter Exchange	Melbourne, Australia	166.60	
Scott & Underwood	Sydney, Australia	23.91	
Chas. Davis	Hobart, Tasmania	786.39	
Noyes Bros.	Sydney, Australia	1,075.73	1629
Phillip Bros.	Cape Town, South Africa	206.30	
Scott Bros.	Cape Town, South Africa	66.92	
Phillip Bros.	Port Elizabeth, South Africa	22.49	
Atkinson & Son	Durban, South Africa	55.77	
Blagden & Company	London	186.09	
Wm. Dunn & Company	London	128.00	
Hodgson, Hay & Company	Port Elizabeth, So. Africa	77.50	
Carthy & Cooke, Ltd.	Honolulu, H. I.	3.00	
McLean & Archibald	Wellington, New Zealand	83.63	
Antonio Ribeiro	Beira, South Africa	113.80	
D. Freckel, Ltd.	London	50.79	
Arbuckle Bros.	New York	399.91	
Levering Coffee Company	Baltimore, Md.	416,255.77	
Williams Russel & Company	New York	286.44	
" " "	New York	12,902.99	
Alzamora Palazio & Company		32.12	
Export Rebuilt Typewriter Co.		1,000.00	

1630 *Exhibit I Annexed to Answering Affidavit of George E. Warren*

National Carbon Company		2,200.00
J. Avon & Company	New York	213.58
Bennett Day & Company	"	334.00
Eppens Smith Company	"	30,911.40
Estate of James Everard	"	40.89
Frederick M. Genung	"	2,936.85
Panama S. S. Company	"	209.02
Smith, Kirkpatrick & Company		105.45
1631 Waldorf Astoria Hotel Company New York		10,595.18
Johnson Layn Coffee Company		1.55
United States Army		23,172.82
United States Navy		9,982.38
Montgomery, Ward & Company		2,048.15
Jones Hukin Company		23,794.65
Booth & Company		190.00
John O'Donohue's Sons		42.30
Russell & Company		702.54
H. B. Hollins & Company		10,592.11
1632 Walter F. Blake		15,438.71
Wm. S. Scull & Company		1,367.06
John S. Sills & Son		692.62
S. D. Stanatopulo		308.70
Carried Forward		$948,443.10

CROSSMAN & SIELCKEN in Liqn.
By THORLEIF S. B. NIELSEN

Mitchell Bros.	5,092.37
Sprague, Warner & Company	3,622.87
Widlar & Company	2,177.45
Sundry Debtors	17,485.54
Woolson Spice Company	21,428.04
Estate of Geo. C. Boldt	375,615.45
Total Neutral and Allied Countries	$1,373,864.82

Exhibit I Annexed to Answering Affidavit of George E. Warren 1633

FOREIGN DRAFTS SENT OUT FOR COLLECTION:

Berringer & Company	Para, Brazil	$ 4,913.35	
Banco Nacional Ultramarino	" "	24,166.86	
Banco Aleman Trans-atlantico	" "	449.80	
Banco de Para	" "	48,235.12	
Banco de La Nacion Argentina	Buenos Aires, Argentina	2,019.00	
Brazilianische Bank fur Deutschland	Bahia, Brazil	123,469.25	
Banco de Brazil	Para, Brazil	1,947.56	1634
Moreira Gomes & Company	" "	452.23	
Marc Jacob	Manaos, Brazil	126.16	
Deutsche Sud Amerika Bank	" "	1,612.36	
Francisco Aguiar & Company	Maranhan, Brazil	11,559.46	
Agencia Gomes	" "	1,999.37	
International Banking Corporation	New York	658.19	
National City Bank	New York	182,841.84	
J. Henry Schroder & Company	London	152.68	
Kleinworth Sons & Company	London	4,210.83	1635
Danske Landsmans Bank		2,680.09	
Colonial Bank	New York	2,047.01	
Total Foreign Drafts sent out for Collection		$423,541.16	

MISCELLANEOUS ACCOUNTS RECEIVABLE:

Transportation Insurance	$ 137.50	
Employees Accounts	2,690.00	
Government of Sao Paulo	89,606.09	
Special Interest Account	9,501.18	
J. Henry Schroder & Company	Sao Paulo Treasury Bills	15,240.89
Kleinworth Sons & Company	" " " "	2,511.96
Sorenson & Neilsen		22,403.35
Total Miscellaneous Accounts Receivable	$142,090.97	
TOTAL, Carried to Balance Sheet, Exhibit A	$1,939,496.95	

CROSSMAN & SIELCKEN in Liqn.
By— THORLEIF S. B. NIELSEN

DUE FROM CONCERNS IN ENEMY COUNTRIES:

Siegmund Robinow & Sohn	Hamburg, Germany	$ 74.55
Theodor Wille	Hamburg, Germany	403,033.72
Ohliger & Company	Manaos, Brazil	5,850.68
Perinam Ziegler & Company	Hamburg, Germany	175,000.00
L. Behrens & Sohn	Hamburg, Germany	320.23
H. Diedricksen & Company	Hamburg, Germany	79,887.85
TOTAL, Carried to Balance Sheet, Exhibit A		$664,167.03

1637

Note:—

360 shares of the Woolson Spice Company Common Stock are held in trust by Crossman and Sielcken for Theodor Wille, Hamburg. The certificates of stock are in name of Hermann Sielcken.

CROSSMAN & SIELCKEN in Liqn.
By— THORLEIF S. B. NIELSEN

INVENTORY — SEPTEMBER 30, 1917

EXPORT MERCHANDISE

1638

Goods on hand purchased by Crossman and Sielcken for which no export permit was allowed	$191,376.94	
Insurance and Storage Charges Applicable	644.77	$190,732.17
COFFEE		
1,290 Bags on Hand—		
166,023 lbs. at 10c per lb.	$ 16,602.30	
10,709 lbs. at 8⅜c per lb.	896.88	
	$ 17,499.18	
Less:		
2% Discount	350.00	17,149.18
POSTAGE AND STATIONERY		325.00
TOTAL, carried to Balance Sheet, Exhibit A		$208,206.35

CROSSMAN & SIELCKEN in Liqn.
By— THORLEIF S. B. NIELSEN

Exhibit I Annexed to Answering Affidavit of George E. Warren 1639

INVENTORY CERTIFICATE

New York, Dec. 5, 1917.

We, JOHN S. SORENSON and THORLEIF S. B. Nielsen, hereby certify that the merchandise on hand September 30, 1917, paid for by Crossman and Sielcken and not charged to clients, was as follows:

Export Merchandise	$190,732.17
Coffee	17,149.18
Postage and Stationery	325.00
	$208,206.35

1640

1. The above figures were compiled either by us or under our instructions.

2. The quantity of coffee has been determined by actual weight.

3. The stock on hand is stated at cost to Crossman and Sielcken, less all trade and cash discounts.

4. All the goods are in good salable condition. 1641

5. That in our opinion the amount stated above is a fair and proper valuation of the said stock.

6. That all stock has been paid for by Crossman and Sielcken and has not yet been charged to clients.

7. That there is no hypothecation or lien on any of the above.

The coffee has been taken into inventory at the market price, the same being much lower than the actual cost.

Postage and stationery have been taken into inventory at an estimate by.

(Signed) JOHN S. SORENSON
(Signed) THORLEIF S. B. NIELSEN
CROSSMAN & SIELCKEN, in Liqn.
By THORLEIF S. B. NIELSEN

Exhibit I Annexed to Answering Affidavit of George E. Warren

Schedule VII

STOCKS AND BONDS — **September 30, 1917**

Number Held	Name of Company	Par Value	Cost		Present Market or Book Value	
STOCKS						
50	American District Telegraph Company of Brooklyn	$ 25	$ 1,250.00		$ 500.00	
50	First Re-Insurance Company of Hartford	100	10,000.00		10,000.00	
35	Lincoln National Bank of Pittsburgh	100	8,750.00		4,375.00	
5	Mercantile Insurance Company of America	100	750.00		750.00	
50	Pittsburgh Plate Glass Company, Preferred	100	12,500.00		12,500.00	
300	Sao Paulo Coffee Estates	—	6,251.64		6,251.64	
1000	Wm. Shotten Coffee Company, Preferred	100	100,000.00		100,000.00	
36¼	Sheffield Coal and Iron Company, Preferred)					
364	do Common -)					
5	do 1st Mortgage 5% Bonds)		8,261.25		4,130.62	
2	United States Lloyds Certificates		7,600.00		8,000.00	
824	The Woolson Spice Company		413,950.00	569,312.89	906,400.00	$1,052,907.26
BONDS						
50	Bethlehem Steel Company 5% Bonds due 1936	1000	$ 50,287.50		$ 43,000.00	
60	Deutscher Verein 1st Mortgage Bonds 2% and 3%	100	2,700.00		2,700.00	
5	Kansas City, Shreveport and Gulf Terminal Company 4% Bonds due 1927	2 at 1000	1,630.00		1,250.00	
3	New York and Greenwood Lake Railway 5% Bonds due 1946	1 at 100	2,104.20	56,721.70	2,005.50	48,955.50
EXCHANGE MEMBERSHIPS						
2	Chicago Coffee Exchange Memberships)					
1	Chicago Board of Trade ")					12,250.00
				$626,034.59		
TOTAL, carried to Balance Sheet, Exhibit A						$1,114,112.76

CROSSMAN & SIELCKEN, in Liqn.
By THORLEIF S. B. NIELSEN

Exhibit I Annexed to Answering Affidavit of George E. Warren 1645

Schedule VIII

LOANS AND NOTES PAYABLE—SEPTEMBER 30, 1917

	Due Date	*Collateral*	*Amount*	
LOANS:				
Goldman, Sachs & Co.	Oct. 19 1917	Rubber	$ 50,000.00	
do	do	do	50,000.00	
Philadelphia National Bank	Dec. 17, 1917	do	50,000.00	1646
do	do	do	50,000.00	
do	do	do	50,000.00	
do	do	do	50,000.00	
do	do	do	50,000.00	
do	do	do	50,000.00	
National City Bank	Dec. 23, 1917	do	50,000.00	
do	do	do	50,000.00	
do	do	do	50,000.00	
do	do	do	50,000.00	
do	do	do	50,000.00	
do	do	do	50,000.00	
			$700,000.00	1647
NOTES:				
Vorwerk & Co.	Oct. 22, 1917		$ 4,058.12	
do	Nov. 23, 1917		5,941.88	
			$ 10,000.00	
TOTAL, carried to Balance Sheet, Exhibit A			$710,000.00	

CROSSMAN & SIELCKEN, in Liqn.
By THORLEIF S. B. NIELSEN

1648 *Exhibit I Annexed to Answering Affidavit of George E. Warren*

Schedule IX

ACCOUNTS PAYABLE—SEPTEMBER 30, 1917

Due to Concerns in Neutral and Allied Countries:

	R. G. Clinckett	Bridgetown, Barbadoes	$ 82.52
	Allen & Robinson, Ltd.	Honolulu, H. I.	3,758.83
	F. Norman Roach & Company	Bridgetown, Barbadoes	15.78
1649	Cunha & Company	Maranhan, Brazil	5,289.70
	Agencia Gomes	Para, Brazil	604.30
	Augusta Vallega	Montevideo, Uruguay	1,974.59
	Francisco Aguiar & Company	Maranhan, Brazil	571.85
	Besa & Company	Valparaiso, Chili	43.09
	Jeronymo Cardozo Botelho	Para, Brazil	1,386.70
	Lahusen & Company	Buenos Aires, Argentina	2,225.19
	Moreiva, Gomes & Company	Para, Brazil	744.33
	A. M. Slach	Buenos Aires, Argentina	478.22
	Unias de Ferros (Bromberg Dandt & Company)	Port Allegri, Brazil	38.45
	Leopoldino Ry. Company, Ltd.	Rio de Janeiro, Brazil	8,207.32
1650	Ernesto Torniquist & Company	Buenos Aires, Argentina	61.86
	A. Carvalhaes	Manaos, Brazil	45.36
	Warburg & Goldschmidt	Buenos Aires, Argentina	2,975.00
	Benchimal & Company	Para, Brazil	3,048.66
	Compania Pastoril Paraense	do	4,959.81
	Eduardo Ruggio	Montevideo, Uruguay	5.98
	Rossi & Company	do	17.14
	Moreiva Sobrinbro & Company	Maranhan, Brazil	1.15
	Diaz Cardoza & Company	Para, Brazil	25.00
	Luiz Machado	do	113.21
	Weber & Schweizer	Bahia, Brazil	56.68
	Rodolfo Leyser		1,940.84
	Bush Terminal Company	New York	3,069.56
	L. H. F. Root	do	228.51
	New York Dock Company	do	7,915.18
	Collins & Company	do	23.36
	Sanderson & Son	do	95.03
	Eugene Suter		11,572.72

Exhibit I Annexed to Answering Affidavit of George E. Warren 1651

L. D. Caulk & Company		17,532.68	
Consolidated Dental Mfg. Co.	do	4,340.49	
S. S. White Dental Mfg. Co.	do	9,437.74	
Benjamin C. Wilson	Cincinnati	14,122.99	
Estate Carvalho	New York	2,701.16	
Florentino Forrera	do	639.37	
Georges Haussmann	do	812.86	
Terheyden & Company	do	561.71	
C. W. Jean & Company	do	23.10	
Flint & Walling Mfg. Co.	do	34.48	1652
Pelton & Crane Company	do	16.80	
W. & B. Douglas	do	398.51	
W. E. Sutton & Company	do	167.40	
R. E. Dietz Company	do	55.77	
David S. Hays	do	87.99	
Hammond Typewriter Company	do	200.00	
Standard Paint Company	do	213.81	
American Blower Company	do	1,075.73	
Crayton Hardwood Lbr. Company	do	44.24	
R. F. Avery & Sons	do	6.00	
Deere & Company	do	21.94	
Roderick Lean Mfg. Company	do	63.43	1653
	Carried Forward	$114,134.12	

CROSSMAN & SIELCKEN, in Liqn.
By THORLEIF S. B. NIELSEN

1654 *Exhibit I Annexed to Answering Affidavit of George E. Warren*

SCHEDULE IX

ACCOUNTS PAYABLE—SEPTEMBER 30, 1917 (Cont'd.)

Due To Concerns In Neutral and Allied Countries: (Cont'd.)

	Brought Forward	$114,134.12
Sundry Creditors		8,533.41
United Fruit Company	New York	1,257.00
1655 Bauer de Columbia	Bogota, Columbia	30,821.67
Total Accounts Payable, Neutral and Allied Countries		$154,746.20

Miscellaneous Accounts Payable:

Burne & Burridge	$ 3,564.38
T. Weitling	4,563.63
J. F. Budelman	4,421.98
Total Miscellaneous Accounts Payable	$ 12,549.99
1656 Total, carried to Balance Sheet, Exhibit A	$167,296.19

Due To Concerns In Enemy Countries:

Ad. Guisemann & Company	Katachula, Mexico	$ 23,199.76
Carl Hoepeke & Company	Florianopolis, Brazil	10,049.95
Total, Carried to Balance Sheet, Exhibit A		$ 33,249.71

CROSSMAN & SIELCKEN, in Liqn.
By THORLEIF S. B. NIELSEN

Exhibit I Annexed to Answering Affidavit of George E. Warren 1657

SCHEDULE X

STATEMENT SHOWING PROBABLE ASSESSMENT OF EXCESS PROFITS TAX ON EARNINGS FOR NINE MONTHS ENDED SEPTEMBER 30, 1917

Net Profit after charging $211,759.74 interest on Mr. Herman Sielcken's Capital		$1,005,806.21
		1658
Deduct:		
Book Appreciation of Stocks and Bonds not yet earned		419,745.63
		$ 586,060.58
Invested Capital—$4,750,000.00		
Exemptions:		
*8% on Invested Capital for pre-war profits	$380,000.00	1659
Statutory exemption allowed partnerships	6,000.00	386,000.00
Taxable Income—not in excess of 15% of Invested Capital		$ 200,060.58
20% Tax on balance of 15% of Invested Capital		$ 40,012.00

*Note:

The partnership earned no pre-war profits and we have allowed a flat 8% on Invested Capital to cover the profits which should have been earned during 1911-1912 and 1913.

CROSSMAN & SIELCKEN, in Liqn.
By THORLEIF S. B. NIELSEN

1660 *Exhibit I Annexed to Answering Affidavit of George E. Warren*

SCHEDULE XI

PARTNERS' ACCOUNTS—SEPTEMBER 30, 1917

Herman Sielcken:		
Balance, January 1, 1917		$4,521,308.79
Add:		
Interest at 6% for nine months to September 30, 1917	$211,759.74	
1661 75% of Net Profit per Profit and Loss Account, Exhibit B	724,345.65	
	$936,105.39	
Deduct:		
Charges for nine months to Sept. 30, 1917	47,446.96	888,658.43
		$5,409,967.22
Thorlief Nielsen:		
1662 12 1/2% of Net Profit per Profit and Loss Account, Exhibit B	$120,724.28	
Deduct:		
Drawings for nine months to September 30, 1917	49,806.18	70,918.10
John Sorenson:		
12 1/2% of Net Profit per Profit and Loss Account, Exhibit B	$120,724.28	
Deduct:		
Drawings for nine months to September 30, 1917	56,840.07	63,884.21
Total Capital, carried to Balance Sheet, Exhibit A		$5,544,769.53

CROSSMAN & SIELCKEN, in Liqn.
By THORLEIF S. B. NIELSEN

Exhibit J Annexed to Answering Affidavit of George E. Warren. 1663

SURROGATE'S COURT,

COUNTY OF NEW YORK.

IN THE MATTER
of
The Transfer Tax on Estate of Hermann Sielcken, Deceased.

1664

County of New York, ss:

Frederick George Colley, Certified Public Accountant, being first duly sworn, does hereby depose and say

That he is a member of the firm of Arthur Young & Company, Public Accountants & Auditors of 71 Broadway, New York City.

That the attached accounts of Crossman and Sielcken (In Liquidation) to October 8, 1917 constitute a full and true copy of the report of Arthur Young & Company prepared from the books of Crossman and Sielcken to the date of the death of Herman Sielcken. 1665

In Witness Wherefore I hereunto set my hand and seal this twenty-third day of October, 1918

(sd) FREDERICK GEORGE COLLEY

Sworn to before me this 23 day
of October 1918.
(sd.) Isabel R. Richards,
Notary Public,
Kings County.
Kings County No. 156—Reg. No. 9092.
New York Co. No. 109—Reg. No. 9221.
Commission expires Mar. 30, 1919.
(Seal)

1666 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

ARTHUR YOUNG & COMPANY
Accountants and Auditors

61 Broadway (Empire Building)
New York January 15, 1918.

The Columbia Trust Company,
Executors, Estate of Hermann Sielcken, Deceased,
61 Broadway, New York City.

1667

Dear sirs:

In accordance with your instructions we have examined the books and records of Crossman & Sielcken and have prepared therefrom the accompanying statements of the firm's affairs showing Mr. Sielcken's interest therein at the date of his death—October 8, 1917.

The business of Crossman & Sielcken was caried on until September 30, 1917 under the copartnership agreement dated June 2, 1913 between Hermann Sielcken, John S. Sorenson and Thorlief S. B. Nielsen.

1668 The agreement provided that in the event of a termination of the partnership the Assets less all Liabilities should revert to Mr. Sielcken.

As the result of the United States declaring war against Germany and Mr. Sielcken being considered, on account of his residence in Germany to be an enemy, the Alien Property Custodian required the concern to discontinue business as of September 30, 1917 and appointed Messrs. Sorenson and Nielsen as Liquidators.

The statements submitted herewith compare the condition of the firm's affairs at the termination of the partnership September 30, 1917 with the condition at October 8, 1917, the date of Mr. Sielcken's death.

The Capital Value of Mr. Sielcken's interest in the firm of Crossman and Sielcken at date of his decease as shown by the books and brought out in Exhibit A was $5,398,704.07.

We understand that you have received a copy of our report showing the condition of the firm's affairs at

Exhibit J Annexed to Answering Affidavit of George E. Warren 1669

September 30, 1917 and we are therefore restricting our present remarks to the changes which have taken place since that date.

The changes are explained as follows:

Cash	Increase	$160,357.87	
Receipts			
Collateral Loans		$109,913.32	1670
Notes Receivable Collected		8,832.77	
Accounts Receivable Collected		116,577.48	
Cash Sales		218.78	
Interest		11.71	
Accounts Payable—overpaid		22.50	
		$235,576.56	
Deduct:			
Disbursements			
Accounts Paid	$44,531.94		1671
Cash Purchases	28,108.09		
Pay-rolls	1,238.83		
Rent	1,125.00		
Herman Sielcken Charges	176.91		
Expenses	37.92	75,218.69	
Increase as above		$160,357.87	
Marketable Securities	Decrease	$ 12,227.50	
Depreciation of Securities to Correspond with Market Values at October 8, 1917.			
Collateral Loans Receivable	Decrease	$108,371.46	

1672 *Exhibit J Annexed to Answering Affidavit of George E. Worren*

Cash Collected		$109,913.32
Less: Interest		1,541.86
	Decrease as above	$108,371.46
Notes Receivable	Decrease	$374.02
Cash collected		$8,832.77
Deduct: Additional Notes		
1673 Received		8,458.75
	Decrease as above	$374.02
Accounts Receivable	Increase	$ 47,493,33
Sales charged to Customers		$148,738.12
Interest charged to Customers		2,873.00
Reserve for profits due Managers		5,268.98
1674 Proportion of Expenses borne by Messrs. Sorenson and Nielsen		700.37
Transfer to Accounts Payable		14,949.09
		$172,529.56
Deduct:		
Cash Collected	$116,577.48	
Additional Notes Receivable	8,458.75	125,036.23
	Increase as above	$47,493.33
Inventories	Decrease	$113,210.01

Exhibit J Annexed to Answering Affidavit of George E. Warren 1675

Sales Cash		$ 218.78
Sales charged to Customers		148,738.12
		$148,956.90
Deduct:		
Purchases Cash	28,108.09	
Purchases credited to Accounts Payable	7,638.80	35,746.89
Decrease as above		$113,210.01
Deferred Charges Increase		$834.68

Rent paid in advance and credited to Liquidation Account.

Accounts Payable Decrease		$20,019.06
Cash Paid		$44,531.94
Deduct:		
Purchases	$ 7,638.80	
Marine Insurance	1,486.10	
Expenses	158.33	
Manager's Salaries	258.06	
Rent Refund	22.50	
Transfer to Accounts Receivable	14,949.09	24,512.88
Decrease as above		$ 20,019.06

1676

1677

Partners Accounts

These are fully explained in Schedule XIII.

Yours very truly,

ARTHUR YOUNG & CO.

1678 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

OCTOBER 8, 1917.

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Exhibit J Annexed to Answering Affidavit of George E. Warren

CROSSMAN AND SIELCKEN (IN LIQUIDATION) — **Exhibit A**

COMPARATIVE BALANCE SHEET-OCTOBER 8, 1917

ASSETS	September 30, 1917	October 8, 1917	Increase or *Decrease
CURRENT ASSETS:			
Cash on Hand and in Banks (Schedule I)	$ 277,473.72	$ 437,831.59	$160,357.87
Marketable Securities (Schedule II)	504,260.75	492,033.25	*12,227.50
Collateral Loans Receivable	1,444,724.17	1,336,352.71	*108,371.46
Notes Receivable (Schedule IV)	348,154.68	347,780.66	* 374.02
Accounts Receivable (Sch. V)- Due from Domestic, Allied and Neutral Concerns	1,934,227.97	1,981,721.30	47,493.33
Inventories (Schedule VI)	208,206.35	94,996.34	*113,210.01
Total Current Assets	$4,717,047.64	$4,690,715.85	*$ 26,331.79
DUE FROM CONCERNS IN ENEMY COUNTRIES (Schedule VII)	664,167.03	664,167.03	-- ----
STOCKS AND BONDS (Schedule VIII)	1,114,112.76	1,114,112.76	-- ----
DEFERRED CHARGES:			
Rent paid in advance	-- ----	834.68	834.68
	$6,495,327.43	$6,469,830.32	*$ 25,497.11

LIABILITIES	September 30, 1917	October 8, 1917	Increase or Decrease
CURRENT LIABILITIES:			
Loans and Notes Payable (Schedule IX)	$ 710,000.00	$ 710,000.00	$ ------
Accounts Payable- Due to Domestic, Allied and Neutral Concerns (Schedule X)	167,296.19	147,277.13	*20,019.06
Total Current Liabilities	877,296.19	$ 857,277.13	*$20,019.06
DUE TO CONCERNS IN ENEMY COUNTRIES (Schedule XI)	33,249.71	33,249.71	------
RESERVES:			
For Excess Profits Tax (Schedule XII)	40,012.00	40,012.00	------
For Profits due Managers	------	5,268.98	5,268.98
PARTNERS' ACCOUNTS: (Sch. XIII)			
Hermann Sielcken	5,409,967.22	5,398,704.07	*11,263.15
Thorlief Nielsen	70,918.10	71,176.16	258.06
John Sorenson	63,234.21	64,142.27	258.06
	$6,495,327.43	$6,469,830.32	*$25,497.11

* Denotes Figures in Red on Original.

1684 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

Exhibit B.

LIQUIDATION ACCOUNT—FOR EIGHT DAYS ENDED OCTOBER 8, 1917

Sales		$148,956.90	
Less:			
Cost of Sales:			
Purchases	$35,746.89		
1685 Decrease in Inventory	113,210.01	148,956.90	
Liquidators' Remuneration		$ 516.12	
Office Salaries		1,238.83	
Managers' Salaries		258.06	
Rent of Premises		290.32	
Marine Insurance		1,486.10	
General Expenses		196.25	
Depreciation of Marketable Securities		12,227.50	$16,213.18
Deduct:			
Other Income:			
1686 Interest			4,426.57
			$11,786.61
Deduct:			
Proportion of expenses borne by Sorenson and Nielsen, 20% of expenses excluding Liquidators' Remuneration and Rent		$ 635.85	
Rent at $3,000 per annum being approximate amount Sorenson and Nielsen would be obliged to pay for suitable premises		64.52	700.37
NET LOSS transferred to Hermann Sielcken's Capital Account			$11,086.24

Exhibit J Annexed to Answering Affidavit of George E. Warren 1687

Schedule I.

CROSSMAN & SIELCKEN (IN LIQUIDATION)

Cash in Banks and on Hand—October 8, 1917

In Banks:		
Equitable Trust Company	$ 27,216.33	
National City Bank	10,906.78	
Chase National Bank	4,611.18	
Guaranty Trust Company	11,489.47	1688
Corn Exchange Bank	3,561.19	
Hanover National Bank	50,794.64	
Columbia Trust Company	324,752.00	
Total Cash in Banks	$433,331.59	
On Hand:	4,500.00	
TOTAL, carried to Balance Sheet, Exhibit A	$437,831.59	

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Exhibit J Annexed to Answering Affidavit of George E. Warren

Schedule II

CROSSMAN AND SIELCKEN (IN LIQUIDATION)

MARKETABLE SECURITIES-OCTOBER 8, 1917.

Number Held	Nature of Securities	Par Value	Cost		Market and Book Value (October 8)		
BONDS							
6	New York City 4 ¼s due 1962	$1000	$ 6,015.00		98 ¼	$ 5,895.00	
35	Kansas City Terminal Railway 4s due 1960	1000	33,250.00		80	28,000.00	
42	Colorado Industrial Company 5s due 1934	1000	31,500.00		75 ½	31,710.00	
25	Southern Pacific Refunding 4s due 1955	1000	23,737.50		84 ¾	21,156.25	
46	New York Central Debenture 4s due 1934	1000	41,084.50		81	37,260.00	
30	United States Liberty Bonds 3 ½s	1000	30,000.00	$165,587.00	99.54	29,862.00	$153,883.25
STOCKS							
20	American Sugar Refining Company	$100	$ 2,240.00		107 ¼	$ 2,145.00	
1000	Brooklyn Union Gas Company	100	145,125.00		95	95,000.00	
642	Columbia Trust Company	100	127,422.20		285	182,970.00	
200	do. Benefit Certificates	--	3,500.00		11	2,200.00	
144	General Development Company	25	1,905.12		25	3,600.00	
200	Kansas City Southern Railroad Company, Preferred	100	13,064.47		50 ½	10,100.00	
300	do Common	100	11,934.50		18	5,400.00	
300	Lawyers Title Insurance and Trust Company	100	93,750.00		105	31,500.00	
100	Miami Copper Company	5	2,250.00		32 ½	3,250.00	
5	Pittsburgh Plate Glass Company, Common	100	500.00		119	595.00	
	Atlantic Mutual Insurance Company, Scrip	---	1,390.00	403,081.29	--	1,390.00	338,150.00
				$568,668.29			
	TOTAL, carried to Balance Sheet, Exhibit A						$492,033.25

Exhibit J Annexed to Answering Affidavit of George E. Warren

SCHEDULE III

CROSSMAN AND SIELCKEN (IN LIQUIDATION)

COLLATERAL LOANS RECEIVABLE, OCTOBER 8, 1917.

Name	Location	Nature of Collateral	Balance at Sept. 30, 1917 Less Cash Collected Since	Interest for 8 Days		Balance October 8, 1917 Value of Collateral	Indebtedness
Hilker, Paul G.	Baltimore, Md.	Rubber	$ 726,468.69	5½%	$ 928.88	$ 826,167.26	$ 727,397.57
Heusser, H.	do	Coffee	127,795.94	none		115,911.45	127,795.94
Seitz, Louis	do.	Coffee	27,377.55	6%	51.26	27,428.81	27,428.81
Mitchell Bros.	do.	Coffee	219,963.49	6%	342.60	228,502.30	220,306.09
Stanatopulo, S. D.	do.	Coffee	20,286.67	6%	27.05	20,286.67	20,313.72
Pickslay, J. D.	do.	Fidelity & Phoenix Insurance Co. Stock Certificates	2,316.29	5%	2.57	2,316.29	2,318.86
Rohrecke, G.	do.	Miami Copper Company & Atchison, Topeka & Santa Fe Stock Certificates	10,547.05	5%	11.68	10,547.05	10,558.73
Koehrmann, J. W.	Toledo, Ohio	Woolson Spice Company—Stock Certificates	32,045.13	4%	28.49	32,045.13	32,073.62
Biggs, F. H.	do.	do.	16,022.57	4%	14.24	16,022.57	16,036.81
Nielsen, Thorlief	New York City	do.	15,984.64	4%	14.21	15,984.64	15,998.85
Sorenson, John S.	do.	do.	15,984.64	4%	14.21	15,984.64	15,998.85
Vanderlip, Frank A.	do.	do.	32,013.19	4%	28.45	32,018.19	32,046.64
Shotton Coffee Co.,	W. St. Louis, Mo.	Real Estate and Insurance Policies	88,000.00	5%	78.22	88,000.00	88,078.22
			$1,334,810.85		$1,541.86	$1,431,215.00	
						1,336,352.71	
		Excess Collateral over Loans				$94,862.29	
TOTAL, carried to Balance Sheet, Exhibit A							$1,336,352.71

1696 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

Schedule IV.

CROSSMAN & SIELCKEN (IN LIQUIDATION)

NOTES RECEIVABLE—OCTOBER 8, 1917

	Maker	*Demand*	*Due Date*	*Amount*	*Total*
	AMERICAN:				
	G. S. Kutz	$1,900.00			
	The City Hall Realty Co.		June 20, 1918	$7,000.00	
	do		June 20, 1919	7,000.00	
1697	do		June 20, 1920	7,000.00	
	do		June 20, 1921	7,000.00	
	do		June 20, 1922	72,000.00	$100,000.00
	The Heekin Can Company		Jan. 7, 1918	$25,000.00	
	do		Jan. 14, 1918	25,000.00	
	do		Jan. 21, 1918	25,000.00	
	do		Jan. 28, 1918	25,000.00	
	do		Feb. 4, 1918	25,000.00	
	do		Feb. 11, 1918	25,000.00	
	do		Feb. 18, 1918	25,000.00	
	do		Feb. 25, 1918	25,000.00	200,000.00
1698	E. I. DuPont de Nemours & Co.		Oct. 19, 1917	$ 1,288.52	
	do		Oct. 19, 1917	8,600.00	9,888.52
	Braunling Coffee Company		Nov. 5, 1917		250.00
	National City Bank of New York		Dec. 10, 1917		1,792.14
	Pickslay, J. D.	2,300.00			
		$4,200.00			$311,930.66
	Due from concerns in neutral and allied countries:				
	Vorwerk & Company, Valparaiso		Oct. 31, 1917	$3,191.25	
	do		Jan. 4, 1918	8,458.75	$11,650.00
	Thomas Drysdale & Co., Buenos Aires				20,000.00
					$31,650.00

Exhibit J Annexed to Answering Affidavit of George E. Warren 1699

SUMMARY

Demand Notes Receivable		$4,200.00
Time Notes Receivable:		
Concerns in the United States	$311,930.66	
Concerns in Neutral and Allied Countries	31,650.00	343,580.66
TOTAL, carried to Balance Sheet, Exhibit A		$347,780.66

1700

Schedule V.

ACCOUNTS RECEIVABLE—OCTOBER 8, 1917

J. G. Aranjo	$43,251.25
A. Monrao & Company	9,283.31
Bromberg & Company	8,702.89
Thos. Drysdale & Company	32,615.49
Franklin Veras & Company	477.66
Fonck & Company	486.25
Guinle & Company	47,459.85
Gustav Graeff	2,438.11
John Lumsden	27.98
H. Theo. Muller	5,924.64
Leite, Jr. & Company	716.09
Leonel de Carvalho	50.23
Louis Hermanny & Company	88,380.88
Merrelles & Company	1,280.31
Pires Franco & Company	1,949.89
Rieckmann & Company	26,775.87
Ricardo Schultz & Company	11,059.03
Robert Pusterla & Company	13,523.05
Semper & Company	1,212.17
Stubenrauch & Company	3,957.85
Hime & Company	17.00
Vorwerk & Company	20,397.62
Jose Novita & Amido	7,164.75
Mostardira Irmao	3.58

1701

1702 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

Piza, Piza & Company	330.81
Bianchi & Hamres	11.05
Jorge Barry & Hermanes	17.72
Hermann Lundgren	39.09
Ferreira Costa & Company	11.05
Ferreira Gomez & Company	7.76
Cereija & Company	1,263.05
Richard Lodders	34.75
Guerin & Company	534.73
1703 Ferreira & Irmar	115.39
R. E. G. Jaacke	25.73
Salvo Componias & Company	1,038.85
A. Lisboa & Company	16.15
Fereira Mattos & Company	356.38
Ferreira de Oliveira & Sobrinho	190.56
Eugenio Barth & Company	3.95
Arzeno & Daruspe	1,298.67
Ramon Jove	5.33
Barrera & Company	78.60
A. Acosta & Company	112.50
Broqua & Schollberg	519.07
Anezin Harmanos & Company	13.48
1704 Juan Marabotto & Company	183.65
Escola de Eugenharria	8.20
Cia Argentina Instrumental Cientifico	12.48
Dr. Joas Noronha Santos	5.25
Eduardo Germain	908.60
Jacob Walter & Company	1,040.00
Bromberg & Company	341.97
Warburg & Goldschmidt	848.78
A. A. Barhati & Company	18.00
A. F. DeSouza & Company	111.29
Banco de Columbia	17.42
Lewers & Cooke, Ltd.	11,745.79
Honolulu Rapid Transit & Land Company	21,355.79
Milton E. Springer & Company	10.53
Wm. Rummell	129.97
J. H. Butler & Company	37.65
John Danks & Sons	398.98
Commonwealth Typewriter Exchange	166.60

Exhibit J Annexed to Answering Affidavit of George E. Warren

Stott & Underwood	23.91	
Chas. Davis	786.39	
Noyes Brothers	1,075.73	
Philip Brothers	206.30	
Scott Brothers	66.92	
Philip Brothers	22.49	
Atkinson & Son	55.77	
Blagden & Company	186.09	
Wm. Dunn & Company	128.00	
Hodgson, Hay & Company	77.50	
Carthy & Cooke, Ltd.	3.00	1706
McLeon & Archibald	83.63	
Antonio Rideiro	113.80	
D. Frenkel, Ltd.	50.79	
Levering Coffee Company	416,255.77	
Williams Russell & Company	57.76	
Williams Russell & Company	12,902.99	
Alzamora Palazio & Company	32.12	
Export Rebuilt Typewriter Company	1,000.00	
National Carbon Company	2,200.00	
J. Avon & Company	213.58	
Bennett Day & Company	334.00	
Eppens Smith Company	2,911.40	1707
Estate of James Everard	43.14	
Frederick M. Genung	335.85	
Panama S. S. Company	209.02	
Smith Kirkpatrick & Company	143.28	
Waldorf Astoria Hotel Company	10,595.18	
Johnson Layn Coffee Company	1.55	
United States Army	23,172.82	
United States Navy	9,982.38	
Montgomery, Ward & Company	2,048.15	
Jones Hukin Company	23,794.65	
Booth & Company	190.00	
John O'Donohue & Sons	42.30	
Russell & Company	702.54	
H. B. Hollins & Company	10,592.11	
Walter F. Blake	15,438.71	
Wm. S. Scull & Company	1,367.06	

1708 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

	John S. Sills & Company	692.62
	S. D. Stanatopulo	308.70
	Mitchell Brothers	4,692.37
	Sprague Warner & Company	3,622.87
	Widlar & Company	2,177.45
	Sundry Debtors	17,485.54
	Woolson Spice Company	21,428.04
	Estate of Geo. C. Boldt	375,615.45
	Grebe & Drebel	23.62
1709	New York Central R. R. Company	42.90
	Mica Insulator Company	711.53
	Hot Point Electric Htg. Company	12.10
		$1,334,781.27

FOREIGN DRAFTS SENT OUT FOR COLLECTION:

	Berringer & Company	$ 2,451.28	
	Banco Nacional Ultramarino	24,447.35	
	Banco Aleman Transatlantico	449.80	
	Banco de Para	37,413.71	
	Banco de La Nacion Argentina	2,019.00	
1710	Brazilianische Bank fur Deutschland	100,809.85	
	Banco de Brazil	1,947.56	
	Moreira Gomes & Company	452.23	
	Marc Jacob	126.16	
	Deutsche Sud Amerika Bank	1,612.36	
	Francisco Aguiar & Company	11,559.46	
	Agencia Gomezz	2,005.18	
	International Banking Corporation	658.19	
	National City Bank	160,614.65	
	J. Henry Schroder & Company	152.68	
	Kleinworth Sons & Company	4,210.83	
	Danske Landsman Bank	2,680.09	
	Colonial Bank	166.89	353,777.27

Exhibit J Annexed to Answering Affidavit of George E. Warren 1711

MISCELLANEOUS ACCOUNTS RECEIVABLE:

Transportation Insurance	89.01	
Employes' Accounts	2,604.20	
Government of Sao Paulo	89,606.09	
Special Interest Account	12,347.65	
J. Henry Schroder & Company	15,240.89	
Kleinworth Sons & Company	2,511.96	
Sorenson & Nielsen	170,762.96	293,162.76
Total, carried to Balance Sheet, Exhibit A		$1,981,721.30

1712

Schedule VI.

CROSSMAN & SIELCKEN (IN LIQUIDATION)

INVENTORY CERTIFICATE

October 8, 1917.

We, John S. Sorenson and Thorlief S. B. Nielsen, hereby certify that the merchandise on hand October 8th, 1917, paid for by Crossman and Sielcken, and not charged to clients, was as follows: 1713

Export Merchandise	$77,847.16
Coffee	17,149.18
	$94,996.34

(Signed) JOHN S. SORENSON
(Signed) THORLIEF S. B. NIELSEN

1714 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

Schedule VII.

CROSSMAN AND SIELCKEN (IN LIQUIDATION)

DUE FROM CONCERNS IN ENEMY COUNTRIES—OCTOBER 8, 1917.

Siegmund Robinow & Sohn	Hamburg, Germany	$ 74.55
Theodor Wille	do.	403,033.72
Ohliger & Company	Manaos, Brazil	5,850.68
1715 Perinam Ziegler & Company	Hamburg, Germany	175,000.00
I. Behrens & Sohn	do.	320.23
H. Diedricksen & Company	do.	79,887.85
Total, carried to Balance Sheet, Exhibit A		$664,167.03

NOTE:—

360 shares of the Woolson Spice Company Common Stock are held in trust by Crossman and Sielcken for Theodor Wille, Hamburg. The certificates
1716 of stock are in the name of Hermann Sielcken.

Exhibit J Annexed to Answering Affidavit of George E. Warren

Schedule VIII.

CROSSMAN AND SIELCKEN (IN LIQUIDATION)

STOCKS AND BONDS—OCTOBER 8, 1917

Number Held	Name of Company	Par Value	Cost		Present Market or Book Value	
STOCKS						
50	American District Telegraph Company of Brooklyn	$ 25.	$ 1,250.00		$ 500.00	
50	First Re-insurance Company of Hartford	100.	10,000.00		10,000.00	
35	Lincoln National Bank of Pittsburgh	100.	8,750.00		4,375.00	
5	Mercantile Insurance Company of America	100.	750.00		750.00	
50	Pittsburgh Plate Glass Company, Preferred	100.	12,500.00		12,500.00	
380	Sao Paulo Coffee Estates		6,251.64		6,251.64	
1000	Wm. Shotten Coffee Company, Preferred	100.	100,000.00		100,000.00	
36 1/4	Sheffield Coal and Iron Company—Preferred)					
364	do Common)					
5	do 1st Mortgage 5% Bonds)		6,261.25		4,130.62	
2	United States Lloyds Certificates		7,600.00		8,000.00	
824	The Woolson Spice Company	100.	413,950.00	$569,312.89	906,400.00	$1,052,907.26
BONDS						
50	Bethlehem Steel Company 5% Bonds due 1936	$ 1,000.	$ 50,287.50		$ 48,000.00	
60	Deutscher, Verein 1st Mortgage Bonds 2% and 3%	100.	2,700.00		2,700.00	
5	Kansas City, Shreveport and Gulf Terminal Company 4% Bonds due 1927		1,630.00		1,250.00	
3	New York and Greenwood Lake Railway 5% Bonds due 1946	2 at 1,000.				
		1 at 100.	2,104.20		2,005.50	48,955.50
EXCHANGE MEMBERSHIPS						
2	Chicago Coffee Exchange Membership)					
1	Chicago Board of Trade Membership)					12,250.00
	TOTAL, carried to Balance Sheet, Exhibit A					$1,114,112.76

1720 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

Schedule IX.

LOANS AND NOTES PAYABLE—OCTOBER 8, 1917

	Due Date	Collateral	Amount
LOANS:			
Goldman, Sachs & Company	Oct. 19, 1917	Rubber	$ 50,000.00
do.	do.	do.	50,000.00
1721 Philadelphia National Bank	Dec. 17, 1917	do.	50,000.00
do.	do.	do.	50,000.00
do.	do.	do.	50,000.00
do.	do.	do.	50,000.00
do.	do.	do.	50,000.00
do.	do.	do.	50,000.00
National City Bank	Dec. 23, 1917	do.	50,000.00
do.	do.	do.	50,000.00
do.	do.	do.	50,000.00
do.	do.	do.	50,000.00
do.	do.	do.	50,000.00
do.	do.	do.	50,000.00
1722			$700,000.00
NOTES:			
Vorwerk & Company	Oct. 22, 1917		$ 4,058.12
do.	Nov. 23, 1917		5,941.88
			$ 10,000.00
Total, carried to Balance Sheet, Exhibit A			$710,000.00

Exhibit J Annexed to Answering Affidavit of George E. Warren 1723

Schedule X.

CROSSMAN AND SIELCKEN (IN LIQUIDATION)

ACCOUNTS PAYABLE—OCTOBER 8, 1917

R. G. Clinckett	$ 82.52	
Allen & Robinson	3,758.83	
F. N. Roach & Company	15.78	
Cunha & Company	4,183.20	
Agencia Gomes	604.30	1724
A. Vallega	1,974.59	
Francisco Aguiar & Company	571.85	
Besa & Company	43.09	
J. C. Botelho	1,386.70	
Lahusen & Company	2,225.19	
Mareiva, Gomes & Company	744.33	
A. M. Slack	478.22	
Unias de Ferrias	38.45	
Leopoldino Ry. Company	8,207.32	
Ernesto Tornquist & Company	61.86	
A. Carvalho	45.36	
Warburg & Goldschmidt	3,039.94	1725
Benchimal & Company	3,048.66	
Compania Pastoril	4,959.81	
Ed. Ruggio	5.98	
Rossi & Company	17.14	
Moreiva Sobrinho & Company	1.15	
Diaz Gardosa & Company	25.00	
Luiz Bachado	113.21	
Weber & Schweizer	56.68	
Rudolph Leyser	1,940.84	
Bush Terminal	3,069.56	
L. H. F. Root	358.19	
New York Dock Company	10,839.73	
Collins & Company	895.61	
Sanderson & Son	95.03	
Eugene Suter	11,572.72	
L. D. Caulk & Company	17,532.68	
Consolidated Dental Mfg. Company	4,340.49	

1726 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

S. S. White Mfg. Company	9,437.74
B. C. Wilson	14,122.99
Estate Carvalho	2,701.16
Florentino Forrera	639.37
Georges Haussmann	812.86
C. W. Jean & Company	23.10
Flint & Walling	34.48
Felton & Crane Company	16.80
W. & B. Douglas	398.51
1727 W. E. Sutton & Company	167.40
R. E. Dietz & Company	55.77
David S. Hays	87.99
Hammond Typewriter Company	150.00
Standard Paint Company	213.81
American Blower Company	1,075.73
Crayton Hardwood Lbr. Company	44.24
R. F. Avery & Sons	6.00
Deere & Company	21.94
Roderick Lean Mfg. Company	63.43
Kohler Kempe	5.00
Sehor Isolda	872.99
Pineda Lopez	819.54
1728 Bell Bag Company	33.50
Meldrum & Martin	653.96
Nathan J. Sullivan	1.00
St. Paul Fire & Marine Insurance Company	1,493.79
Wilcox Peck & Hughes	466.30
Linsser & Company	2,152.50
Cory & Herbert	.81
Charleston Terminal Company	22.40
Banco de Columbia	6,296.67
Austin Nichols & Company	68.00
Geo. Borgfeldt & Company	5.53
Export Rebuilt Typewriter Company	2,450.00
John Bingham	28.45
John N. Graham & Company	229.08
Swan & Finch Company	62.94
Gandelf Pratt Company	68.02
Banco Nacioal Nathonando	20.50
Arthur Domenguez Villa	32.62

Exhibit J Annexed to Answering Affidavit of George E. Warren 1729

Brazil Bank for Deutschland		72.53
Estate James Everard		378.79
Louis C. Hopkins Company		2.50
Paddock & Fowler Company		139.78
S. E. Hendrick & Company		10.00
Underwood Typewriter Company		1.05
Western Union Telegraph Company		3.00
Addressograph Company		3.48
F. S. Blackwell Company		6.75
Alfred P. Brown		115.10
Free Hand Binder Company		6.00
Interest Accrued		30.57
Horace S. Ely & Company		22.50
		$132,982.98

MISCELLANEOUS ACCOUNTS PAYABLE:

Burnet Burridge	$3,564.38	
T. Weitling	4,563.63	
J. F. Budelman	4,421.98	
Managers Salaries Accrued	258.06	
Due for Marine Insurance	1,486.10	14,294.15
Total, carried to Balance Sheet, Exhibit A		$147,277.13

1730

1731

Schedule XI.

CROSSMAN AND SIELCKEN (IN LIQUIDATION)

DUE TO CONCERNS IN ENEMY COUNTRIES—
OCTOBER 8, 1917

		Balance September 30, 1917	Balance October 8, 1917
Ad. Guiseman & Company	Hamburg, Germany	$23,199.76	$23,199.76
Carl Hoopeke & Company	do.	10,049.95	10,049.95
		$33,249.71	$33,249.71

1732 *Exhibit J Annexed to Answering Affidavit of George E. Warren*

Schedule XII.

CROSSMAN AND SIELCKEN (IN LIQUIDATION)

STATEMENT SHOWING PROBABLE ASSESSMENT OF EXCESS PROFITS TAX ON EARNINGS FOR NINE MONTHS AND 8 DAYS ENDED OCTOBER 8, 1917.

1733	Net Profit after charging $211,759.74 interest on Mr. Herman Sielcken's Capital		$1,005,806.21
	Deduct:		
	Book Appreciation of Stocks and Bonds—not yet earned		419,745.63
			$ 586,060.58
	Invested Capital—$4,750,000.00		
	Exemptions:		
1734	*8% on Invested Capital for pre-war profits	$380,000.00	
	Statutory exemption allowed Partnerships	— 6,000.00	386,000.00
	Taxable Income—not in excess of 15% of Invested Capital		$200,060.58
	20% Tax on balance of 15% of Invested Capital		$ 40,012.00

*NOTE:

The partnership earned no pre-war profits and we have allowed a flat 8% on Invested Capital to cover the profits which should have been earned during 1911-1912 and 1913.

Exhibit J Annexed to Answering Affidavit of George E. Warren 1735

Schedule XIII.

CROSSMAN AND SIELCKEN (IN LIQUIDATION)

PARTNER'S ACCOUNTS—OCTOBER 8, 1917

HERMAN SIELCKEN:

Balance September 30, 1917		$5,409,967.22
Net Loss, October 1 to October 8, 1917	$11,086.24	1736
Cash Charges, per Schedule I	176.91	11,263.15
		$5,398,704.07

THORLEIF NIELSEN:

Balance September 30, 1917	$70,918.10	
Liquidators Remuneration, 8 days	258.06	71,176.16

JOHN SORENSON:

Balance September 30, 1917	$63,884.21	1737
Liquidators Remuneration, 8 days	258.06	64,142.27

Total, carried to Balance Sheet, Exhibit A	$5,534,022.50

1738 **Exhibit K-1, Annexed to Answering Affidavit of George E. Warren.**

February 4, 1918

H. M. Kilbourn, Esq.,
Manager New York Office,
Alien Property Custodian,
111 Broadway, New York City.

Dear Mr. Kilbourn:

Referring to your inquiry in regard to the stock of the Woolson Spice Company held in the Sielcken Estate, I write to advise that this property is held by the Columbia Trust Company as Executor under the will
1739 of Hermann Sielcken, which will has been filed for probate in New York. We are advised that the status of the property held by the Executor has changed its character, so that it is no longer alien enemy property, title vesting in the executor, which is a New York corporation.

The executor will administer the estate and will account in due course of administration, accounting of course to the Alien Property Custodian for any property which would be payable to alien enemies. (This is in accordance with the terms of the license issued by the War Trade Board.)

1740 Under the Sielcken Will, we are directed to dispose of this property, and it is entirely possible that the stock of the Woolson Spice Company will be sold before we account, so that the stock will never become the property of an alien enemy. In view of this situation, I do not see that the executor would have any authority to transfer the stock to the name of the Alien Property Custodian. I might state that I have taken up this question with Mr. Morgan M. Mann, who is counsel for the Alien Property Custodian, and he concurs with these views.

As you are aware, before the stock was taken over by the Executor, shares were issued by Crossman & Sielcken in liquidation in the names of the several Directors appointed to represent the Alien Property Custodian, in order to qualify them as Directors.

Trusting this will give you the information you desire, I am

Yours very truly,

W
Vice President

Exhibit K-2, Annexed to Answering Affidavit of George E. Warren. 1741

2274

June 14, 1918.

Joseph A. Bower, Esq., Manager,
General Business Department,
Alien Property Custodian,
120 Broadway, New York City.

Dear Mr. Bower:

As you have been verbally advised, we have received an offer of $675.00 a share for the stock of the Woolson Spice Company, held by us as Executor of the estate of Hermann Sielcken, and by the firm of Crossman & Sielcken for account of Theodore Wille & Company of Hamburg, an alien enemy. 1742 The amount of the stock held by the Estate is 822 shares, although there is some question as to the ownership of one share of this stock, a claim having been made for this share by Judge Doyle, of Toledo. The stock held by the Executor can be sold in the usual way at public sale at Muller's Auction Rooms.

The stock held by Crossman & Sielcken in Liquidation for the alien enemy, amounts to 360 shares. This stock is held for account of Theodore Wille & Company of Hamburg, Germany, and has been reported to the Alien Property Custodian. The firm of Theodore Wille & 1743 Company owes the firm of Crossman & Sielcken in Liquidation something over $400,000, and the firm asserts the claim against the proceeds of the sale of the stock.

These two blocks of stock represent the control of the corporation, and the offer we have received is for the two lots together. Will you therefore kindly procure for us the proper authority to dispose of the 360 shares of stock belonging to the alien enemy, with directions as to the method you wish to have us pursue in putting the stock up for sale.

We would also like to have you advise us if you approve of the sale of the stock belonging to the Sielcken Estate in the way outlined above. The stock can be put up at any weekly sale, which is held on Wednesdays. We would be glad to arrange for the sale of both blocks on any date you may indicate.

Awaiting your further advices, we are,

Yours very truly,

W

Vice President.

1744 **Exhibit K-3, Annexed to Answering Affidavit of George E. Warren.**

July 16, 1918

Morgan M. Mann, Esq., Associate Counsel,
Alien Property Custodian,
110 West 42nd Street,
New York City.

Dear Judge Mann:

re. Estate of Hermann Sielcken

1745 We are writing to ask for your opinion as to the advisability of selling the stock of the Woolson Spice Company held by the firm of Crossman & Sielcken and by the estate of Hermann Sielcken. For your information, the facts are as follows—

The estate of Hermann Sielcken holds 822 shares of stock of the Woolson Spice Company out of a total capitalization of 1800 shares. The firm of Crossman & Sielcken in Liquidation owns 360 shares registered in the name of Hermann Sielcken, held in safe keeping for Theodore Wille of Hamburg, Germany. Theodore Wille owes the firm of Crossman & Sielcken approximately
1746 $400,000 on open account. Therefore, if the 360 shares of stock are sold, it is contemplated that the proceeds would be credited to the account.

Negotiations have been entered into with two groups, one a local group in Toledo, and one a group in New York, for the sale of the two blocks of stock enumerated above. The representative of the group in Toledo has agreed to bid $675.00 a share at auction, and we understand that the group in New York is willing to bid for this stock in competition.

One of the minority stockholders of the Woolson Spice Company has intimated that he may possibly bring an action against the Sielcken Estate to recover certain losses which the Woolson Spice Company suffered under the management of Hermann Sielcken during the years 1913-14-15, I believe, the gross amount of these alleged losses being about $850,000.00. The question of this

Exhibit K-3 Annexed to Answering Affidavit of George E. Warren 1747

possible action has a bearing on the sale of the stock held by the Estate in that if a recovery were had by the minority stockholder, the Sielcken Estate would benefit as a stockholder of the Woolson Spice Company to the extent of 822-ths of the total amount recovered. On the

1800

other hand, we now have an opportunity to sell the stock at what is apparently an advantageous price under existing conditions, while the retention of this stock 1748
by the estate would undoubtedly work to the injury of the Woolson Spice Company owing to the German connection, which has already hurt the business of the company. Moreover, even if the stockholder who threatens an action against the company should abandon his purpose, there is nothing to prevent any of the other minority stockholders from bringing a similar action.

In view of the fact that this estate is being administered under the supervision of the Alien Property Custodian, we would appreciate your views as to the advisability of putting the stock up for sale as is contemplated, on Wednesday, the 24th instant, and if you consider it advisable to go ahead with the contemplated 1749
sale, we would appreciate your instructions as to the method of advertising you wish us to pursue, especially in regard to the stock directly represented by the Alien Property Custodian, viz., 360 shares held for the account of Theodore Wille.

Very truly yours,

GEW
Vice President

gew.dw

1750 **Exhibit K-4, Annexed to Answering Affidavit of George E. Warren.**

ALIEN PROPERTY CUSTODIAN

SIXTEENTH AND P STREETS NW,

Washington, D. C.

New York, N. Y.
April 16, 1918.

George E. Warren, Esq., Vice President,
Columbia Trust Company,
1751 New York City.

Dear Mr. Warren:—

I am returning herewith the Crossman & Sielcken report delivered to me yesterday from your office.

I had an opportunity to discuss the subject of the sale of the Woolson Spice Company stock with Mr. Palmer yesterday afternoon. After giving the matter considerable thought and going over the reports, we all agreed that:

1. The sale of the stock is a responsibility the Trust Company should assume, at a price that it thinks fair and reasonable.

1752 2. We know of no particular reason why it should be sold at public auction, except to eliminate the possibilities of criticism, and then only should be done if you are sure of a firm bid that is satisfactory.

3. We thought an up-set price should be put on the stock of $800 a share, provided all of it is purchased, and if you are unsuccessful in securing that as a minimum, then you might consider whether or not it would not be desirable to liquidate the Company, inasmuch as the book value of the tangible assets, which seem to be liquid and easily convertible, are in excess of $900 a share.

Very respectfully,

J. A. BOWER
Manager, General Business Dpt.

BJ.
Enc.

Exhibit K-5, Annexed to Answering Affidavit of George E. Warren. 1753

ALIEN PROPERTY CUSTODIAN

SIXTEENTH AND P STREETS NW.

Washington, D. C.

June 3, 1918.

The Columbia Trust Company,
New York City.

Attention of Mr. George E. Warren. 1754

Dear Mr. Warren:

Re: Trust No. 1—Herman Sielcken.

With further reference to your letter of May 7th regarding the sum of $100,000 paid in October, 1917, by Crossman and Sielcken to this office for the account of Herman Sielcken before it was known that Herman Sielcken had died:

As this money was received by us from Crossman and Sielcken and not from the Columbia Trust Company, I 1755
do not feel that we can very well give a receipt to the Columbia Trust Company and, as a matter of fact, we have already given an informal receipt to Crossman and Sielcken and another recipt might conceivably make us chargeable with $200,000 instead of the $100,000 which was actually paid.

I am, however, giving instructions that the formal receipt on the regular A.P.C. form shall at once be prepared and sent to Crossman and Sielcken. It occurs to me that this receipt can then be turned over to you by Crossman & Sielcken as an accounting by them of $100,000 of Herman Sielcken's estate. This will have the practical result of treating the payment of $100,000 as an advance payment to the Alien Property Custodian from Herman Sielcken's estate.

Very truly yours,

F. J. HORNE
Director, Bureau of Trusts.

ME/OK

1768 **Exhibit K-6, Annexed to Answering Affidavit of George E. Warren.**

IRVING TRUST COMPANY, NEW YORK

ALIEN PROPERTY CUSTODIAN

SIXTEENTH AND P STREETS, N. W.,

Washington, D. C.

New York, N. Y.
June 19, 1918.

1769 George E. Warren, Esq., Vice President,
Columbia Trust Company,
New York City.

Dear Mr. Warren:

My understanding is that Judge Mann has told you of the manner in which all of the Woolson-Spice Company stock can be sold at once.

Very respectfully,

J. W. BOWER,
Manager, General Business Department.

BJ

1770

Exhibit K-7, Annexed to Answering Affidavit of George E. Warren. 1759

ALIEN PROPERTY CUSTODIAN

24 Broad Street

New York City

July 16, 1918.

George E. Warren, Esq.,
Vice President, Columbia Trust Company,
60 Broadway, New York City.

My dear Mr. Warren:— 1760

I have your letter of July 16 in the matter of the Estate of Hermann Sielcken, relative to the sale of certain shares of stock of the Woolson Spice Company.

I have considered the possibility of a suit by a minority stockholder referred to in your letter, and am of the opinion that despite this possibility the Executor of the Sielcken Will should proceed at once to sell not only the stock belonging to the estate, but that held by the estate for the account of Theodore Wille in one block at public auction as soon as possible.

I note in your letter that you state that the sale is contemplated on Wednesday, July 24. This meets with my approval, and I suggest that you sell it in accordance with the usual custom at the weekly sale of Adrian H. Muller at his auction rooms 14 & 16 Vesey Street, New York City. 1761

Very truly yours,

MORGAN M. MANN
Associate Counsel

MMM/EC

1762 **Exhibit L Annexed to Answering Affidavit of George E. Warren.**

(Duplicate)

A. P. C. Form
No. 106-E
Demand on Fiduciary

Report No. 17412
Trust No. C-1

ALIEN PROPERTY CUSTODIAN

1763 DEMAND BY ALIEN PROPERTY CUSTODIAN FOR PROPERTY

Extracts from "Trading with the enemy Act":

Sec. 7 (c). "If the President shall so require any money or other property owing or belonging to or held for, by on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

1764

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case

Exhibit L Annexed to Answering Affidavit of George E. Warren 1765

of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

1766

Extracts from Executive Order dated February 26, 1918.

Sec. 1 (c). "The words 'right', 'title', 'interest', 'estate', 'power', and 'authority' of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

1767

Sec. 2 (a). "A demand for the conveyance, transfer, assignment, delivery and payment of money or other property unless expressly qualified or limited shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (c). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand,

1768 *Exhibit L Annexed to Answering Affidavit of George E. Warren*

and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the 'Trading with the enemy Act' and with any orders rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

To Columbia Trust Company, as executor of the estate of Hermann Sielcken, deceased.

1769

Address 60 Broadway, New York, N. Y.

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the Executive orders issued in pursuance thereof, by virtue of the authority vested in me by said Act and said Executive orders, after investigation do determine that:

		Names of enemies whose address is
1770		
Trust #	46815	Gustav Diederichsen, Kiel, Germany.
"	"	Heinrich Diederichsen, Kiel, Germany.
"	"	Carl Isenberg, Germany.
"	"	Richard Isenberg, Germany.
"	46816	Heinrich Seidel, Baden-Baden, Germany.
"	46817	Lina Kraft, Baden-Baden, Germany.
"	46818	City of Baden, Baden-Baden, Germany.
"	46819	Josephine Heim Hospital, Baden-Baden, Germany.
"	12604	Clara Sielcken, Germany.

Exhibit L Annexed to Answering Affidavit of George E. Warren 1771

is an enemy (not holding a license granted by the President), and has a certain right, title, and interest in and to the estate of Herman Sielcken, deceased;

I, as Alien Property Custodian, hereby require that every right, title and interest of said enemy in and to the estate above described, including every power and authority thereover, shall be by you conveyed, transferred, assigned, delivered, and paid over to me, as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law, and that any money or property now or hereafter held by you which the enemy may at any time or times, now or hereafter, be entitled to receive either upon or without demand, shall at such time or times be conveyed, transferred, assigned, delivered, and paid over to me, as Alien Property Custodian. 1772

I, as Alien Property Custodian, hereby further require that you shall give to me, as Alien Property Custodian, every notice in respect to the said estate to which the said enemy may be entitled.

The Columbia Trust Co. is hereby designated as depositary, and is authorized to receive, for and on behalf of the Alien Property Custodian, the property herein mentioned, and upon the service of this demand on you by said depositary, you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to the depositary, which in all cases should be made payable to the Alien Property Custodian. 1773

Witness my hand and seal of office, this 27th day of September, 1918.

A. MITCHELL PALMER,
Alien Property Custodian.
By J. L. DAVIS
Managing Director.

JSB:ED

1774 *Exhibit L Annexed to Answering Affidavit of George E. Warren*

Service of the within demand accepted this 25th day of Oct, 1918

C T CO

By G E WARREN
V. P.

Served the within notice and demand on the within-named C T Co. at ..... Street in the City of ....., State of .....
1775 ....., this 25 day of Oct, 1918, by giving a true and correct copy thereof

(In the case of an individual.)

to the person of whom said demand is made.

(In the case of a partnership.)

to ....., a member of the partnership of whom said demand is made.

(In the case of a corporation.)

1776

to G E Warren, a V. P. of the corporation of whom said demand is made, at the office of said corporation.

C T CO

(Illegible)

(Strike out the inapplicable clauses.)

of the State of California
WITHIN THE CITY AND COUNTY OF SAN FRANCISCO

In Open Court

A.D. 18[illegible]

Term

IN CONSIDERATION OF THIS NATURALIZATION OF THIS COURT, by the oath of

Citizen of the United States of America, [illegible]

ORDERED AND DECREED, that the said

be admitted to be a Citizen of the United States of America.

Superior Court of the State of California, in and for the
City and County of San Francisco

In Open Court

January 6

A.D. 1875

A.D.

Clerk.

In the

OF THE

CITY AND COUNTY

Department No.

Judgment Restoring the

Matter of the Naturalization of

August Herman Liebler

An Alien.

Entry Minute Order,

Minute Book Page

JUDGMENT

Instrument in Writing

Restoration of Naturalization Record

Judgment Book

J. No. Page 355

Clerk.

By Deputy Clerk.

Exhibit N Annexed to Answering Affidavit of George E. Warren: 1783

D. A. & C.
E. 8.
for N.

Receipt of a Corporation Claiming any Interest, Right or Title in or to Money or Property on Claim Filed under Section 9 of the Trading with the Enemy Act. 1784

2281

Trust No. 1 Claim No. 5914

WHEREAS, pursuant to the provisions of Section 9 of the Act of Congress, known as the "Trading with the Enemy Act," and the regulations of the Alien Property Custodian in relation thereto, the undersigned has heretofore filed with the Alien Property Custodian notice of claim against the money and property in the hands of said Custodian or the Treasurer of the United States taken as the property of HERMAN SIELCKEN and/or ESTATE OF HERMAN SIELCKEN determined by said Custodian to be an enemy, and has also made application to the Attorney General of the United States for the allowance of said claim under the authority conferred on said Attorney General, by Article XXXII of the Executive Order of October 12, 1917; and 1785

WHEREAS, the Attorney General, exercising the authority so conferred, has ordered the payment of the money or delivery of the property hereinafter described to this applicant;

NOW, THEREFORE, in consideration of the premises, Columbia Trust Company as Executor of the Will of Herman Sielcken, deceased, a corporation in the State of New York, the undersigned, does hereby acknowledge

1786 *Exhibit N Annexed to Answering Affidavit of George E. Warren*

payment of the money or delivery of the property to it by the Alien Property Custodian and the Treasurer of the United States as follows, to wit:

No. Check of the Treasurer of the United States, on Special Account No. 8 to the order of Columbia Trust Company as Executor of the Will of Herman Sielcken, deceased, Trust #1, for the sum of Ninety-four Thousand, Three Hundred Fifty-one Dollars and Thirty Cents ($94,351.30); also All right,
1787 title and interest of Herman Sielcken, now deceased, in the copartnership of Crossman & Sielcken.

And does hereby further acknowledge and accept such money or other property as a full compliance with said order; reserving, however, to the Executor the right to claim and receive interest if and when provision may be made by legislation to that end.

In consideration of the premises, Columbia Trust Company, as Executor of the Will of Herman Sielcken, deceased, the undersigned, as aforesaid, does hereby release and forever discharge the President of the United States, the Treasurer of the United States, A. Mitchell
1788 Palmer, individually and as Alien Property Custodian, Francis P. Garvan, individually and as Alien Property Custodian, Thomas W. Miller, individually and as Alien Property Custodian, all other persons exercising the authority of them, or of any of them, from any and all right, claims and demands of every kind, character and description, whether joint or several, which it may have, based upon or arising out of any and all money or other property paid to or received by the Alien Property Custodian, or by the Treasurer of the United States as the money or other property owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of HERMAN SIELCKEN and/or ESTATE OF HERMAN SIELCKEN and does further release and forever discharge them in respect to anything done or omitted in pursuance of any order, rule or regulation made by the President under the authority of this Act, to the extent of the property above described.

Exhibit N Annexed to Answering Affidavit of George E. Warren 1789

IN WITNESS WHEREOF, Columbia Trust Company, as Executor of the Will of Herman Sielcken, deceased, the corporation as aforesaid, has caused these presents to be executed by George E. Warren, a Vice President, and its corporate seal to be hereunto affixed and attested by Samuel M. Spedon, an Asst. Secretary, this 5th day of April A. D. 1921.

COLUMBIA TRUST CO.
as Executor of Estate of Herman Sielcken
By G. E. WARREN 1790
Vice President

Attest:

S. M. SPEDON
Secretary.

Signed and Sealed
in the Presence of:
N. M. Morgan
H. F. Wilkens

State of New York
County of New York ss:

On the 5th day of April in the year 1921, before me 1791
personally came G. E. Warren to me known, who, being by me duly sworn, did depose and say that he resides in New York City; that he is the Vice President of The Columbia Trust Co., the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that he signed his name thereto by like order.

M. B. LAFOURIAL
(Stamp illegible.)

APC-MM-872.

1792 *Exhibit N Annexed to Answering Affidavit of George E. Warren*

APC-MM-778
Claim 5914
3/31/21

ALIEN PROPERTY CUSTODIAN

Statement of Property Taken over under Trust 1 in the name of Herman Sielcken except payments received by depositary since last report.

1793 Report Received from	Property Received	Income	Property Except Cash to be returned	Cash to be Returned
17412 Columbia Trust Co. as executor of Est. Herman Sielcken, and Crossman & Sielcken, N.Y. C.	All right, title and interest of Herman Sielcken, now deceased in the co-partnership of Crossman & Sielcken			
	Received on account of the liquidation of Crossman & Sielcken			100,000.00
1794	Paid expenses from this trust:			
	To Jos. K. Hutchinson		$2,056.00	
	To Knight, Boland, Hutchinson & Christian		3,592.70	5,648.70
	Balance to return			$ 94,351.30

Exhibit N-1, Annexed to Answering Affidavit of George E. Warren. 1795

April 5, 1921.

Alien Property Custodian,
16th and P Streets,
Washington, D. C.

Dear Sir:

Attention Mr. Caton

1796

I hand you herewith duplicate releases of Claim No. 5914 in connection with Trust No. 1, against our application for the payment of the sum of $100,000 held for account of the late HERMANN SIELCKEN, less deduction of $5,648.70, this property being claimed by Columbia Trust Company as executor, and shall be glad to receive check at your earliest convenience.

Very truly yours,

G. E. WARREN,
Vice President.

SM.
enc.

1797

Exhibit N-2, Annexed to Answering Affidavit of George E. Warren.

2281

DAVIES, AUERBACH & CORNELL,

MUTUAL LIFE BUILDING, 34 NASSAU STREET,

Joseph S. Auerbach
Edward Cornell
Charles E. Hotchkiss
Charles H. Tuttle
Nicholas F. Lenssen
Warner B. Matteson
Harold C. McCollom
Martin A. Schenck

1798 *Exhibit N-2 Annexed to Answering Affidavit of George E. Warren.*

New York, April 6, 1921.

Estate of Herman Sielcken, deceased.

Dear Sir:

Referring to the account of the Alien Property Custodian with you as the Executor of the Will of Hermann Sielcken, deceased, showing certain deductions from the fund of $100,000, I advise you that I have, and hereby
1799 do, approve all the deductions therein set forth, and consent that you as such executor may receive from the custodian the sum of $94,351.30, in full satisfaction of the said $100,000. I am advised that in the release which you are about to send to the custodian in respect of this payment you have reserved the right to claim and receive interest if the same may be provided by legislation hereafter enacted.

Yours very truly,

CLARA SIELCKEN

Columbia Trust Company,
1800 George E. Warren, Esq.,
Vice President,
60 Broadway,
New York City.

NK

In replying address only
The Alien Property Custodian
and refer to No. 2281

File ORJ)
G.E.

Exhibit N-3, Annexed to Answering Affidavit of George E. Warren. 1801

ALIEN PROPERTY CUSTODIAN

SIXTEENTH AND P STREETS NW.

Washington, D. C.

April 14, 1921.

Claim No. 5914
Trust No. 1
Re: Herman Sielcken. 1802

Columbia Trust Company,
60 Broadway,
New York City.

Gentlemen:

We are enclosing herewith check of the Treasurer of the United States No. 3842 for $94,351.30 drawn in the name of the Columbia Trust Company of New York, N. Y., as executor of the will of Herman Sielcken, deceased, Trust No. 1. This check is covered by releases executed by you on April 5, 1921. 1803

Kindly acknowledge receipt of the enclosed check.

Very truly yours,

R. H. JENKINS
Manager, Claim Section,
Bureau of Trusts.

EIY. Enclosure

In the correspondence of the Alien Property Custodian the word "enemy" is used as meaning "enemy" or "ally of enemy," as defined by the Trading with the enemy Act.

1804 **Exhibit N-4, Annexed to Answering Affidavit of George E. Warren.**

(Copy)

June 1, 1921.

Mrs. Clara Sielcken,
Hotel Waldorf-Astoria,
5th Ave. & 34th Street,
New York City.

1805 Dear Madam:

Your drawing account has credit today for $94,351.30 representing amount received by us from Alien Property Custodian for your account.

Kindly sign and return to us, the enclosed receipt.

Very truly yours,

S. M. SPEDON
Assistant Trust Officer.

HM/AFB
Encls.

1806

Exhibit N-5, Annexed to Answering Affidavit of George E. Warren. 1807

Cable Address
"Overdare"

Edward Cornell
Charles E. Hotchkiss
Charles H. Tuttle
Nicholas F. Lenssen
Warner B. Matteson
Harold C. McCollom
Martin A. Schenck 2281 E 1808

DAVIES, AUERBACH & CORNELL
Mutual Life Building, 34 Nassau Street

File W

New York June 1, 1921

Dear Sirs:

With respect to the sum of approximately $94,000, which was returned by the Alien Property Custodian, I understand that you are to deposit that to my account with you. I advise you that you may invest the amount in preferred stocks of the same corporation or of similar corporation of which you have already invested portions of my property. If you desire to consult with Mr. Hotchkiss concerning the same I shall be pleased to have you do so. 1809

Very truly yours,

CLARA SIELCKEN.

Columbia Trust Company,
George E. Warren, Esq.,
60 Broadway,
New York City.

Please buy through
Wessermann Brothers

1810 **Exhibit N-6, Annexed to Answering Affidavit of George E. Warren.**

Copy

June 1, 1921

Dear Mrs. Sielcken:

I write to advise that we are crediting your account today $94,351.30 representing the amount refunded to you by the Alien Property Custodian.

As requested yesterday, we have deposited with the Equitable Trust Company, 222 Broadway, for account
1811 of Mr. H. O. C. Isenberg, the sum of $5,000.00, which has been charged to your account.

We have also charged your account $358.90 in payment of the draft on London for £92-7-8, to the order of J. H. Schroder & Company, and are sending them this with the bill left with us yesterday.

Will you kindly sign and return to us the enclosed letter.

Yours faithfully,

G. E. WARREN
Vice President

1812

Mrs. Herman Sielcken,
The Waldorf-Astoria,
New York City.

Enclosure
RP

Exhibit O Annexed to Answering Affidavit of George E. Warren. 1813

A.P.C. 197

In replying address only
The Alien Property Custodian
and Refer to No.
Claim 3281
Trust 12604 2281
Report 17412-Z
Re. Mrs. Clara Sielcken

ALIEN PROPERTY CUSTODIAN 1814
Sixteenth and P Streets NW.
Washington, D. C.

April 2, 1921.

Columbia Trust Company,
60 Broadway,
New York City.

Gentlemen:

We have received releases executed this day by Clara Sielcken for all right, title and interest in and to the estate of Hermann Sielcken, deceased. 1815

You, as executor of the estate of Hermann Sielcken, may therefore now deal with the said interest of Clara Sielcken in the said estate in the same manner as though such interest had never been reported to or demanded by the Alien Property Custodian.

Very truly yours,

H. B. CATON
Director, Bureau of Trusts

CTG

In the correspondence of the Alien Property Custodian the word "enemy" is used as meaning "enemy" or "ally of enemy," as defined by the Trading with the enemy Act.

1816 **Exhibit P Annexed to Answering Affidavit of George E. Warren.**

At a Surrogate's Court, held in and for the County of New York, at the Hall of Records, on the 7th day of July, 1921.

Present: Hon. John P. Cohalan, Surrogate.

IN THE MATTER of The Judicial Settlement of the account of the COLUMBIA TRUST COMPANY, as Executor of the Last Will and Testament of Hermann Sielcken, deceased.	Final Decree

1817

The Columbia Trust Company (formerly the Columbia-Knickerbocker Trust Company) as Executor of the Last Will and Testament of Hermann Sielcken, deceased, having heretofore filed a petition on the 24th day of June, 1919, in the Surrogate's Court of the County of New York, for the judicial settlement of its account as such Executor and a citation having been thereupon issued,

1818 pursuant to statute, directed to all persons interested in the estate of said decedent citing them and each of them to show cause before said Surrogate upon the day and hour therein fixed, at the Surrogates' Court of said County, held in the Hall of Records in the County of New York, why the account of the Columbia Trust Company, as Executor as aforesaid, should not be judicially settled and the said citation having been returned with proof of due service upon all the persons to whom the same was directed and as all the parties so cited are now in default, having failed to appear herein in person or by attorney, except the following who have appeared herein by attorney, namely:

Eugene Suter, who has appeared by Alfred C. Coxe, his attorney,

John S. Sorenson, Thorleif S. B. Nielsen and Clara Sielcken, who have appeared herein by Davies, Auerbach & Cornell, their attorneys, and

Exhibit P Annexed to Answering Affidavit of George E. Warren 1819

The Alien Property Custodian by Morgan M. Mann, his attorney;

And the Executor's account under oath, with vouchers in support thereof, having been filed in this Court with its said petition for the settlement thereof.

The said petition for a final decree, settling the Executor's account, came on after sundry adjournments for a hearing at a Term of this Court on the 31st day of October, 1919, and was marked for a decree. On the same day, the Alien Property Custodian, a party in 1820
this proceeding, filed objections to the account and on the 11th day of November, 1919, an order was made by this Court appointing John F. Couch Referee herein. No hearing or proceeding of any kind was had before the Referee and on or about the 10th day of May, 1921, the Alien Property Custodian executed and delivered an instrument withdrawing the said objections to the account and consenting to the vacation of the said order of Reference and that this proceeding be marked for a decree. On the 11th day of May, 1921, the Referee executed and delivered his certificate stating that no proceeding had been had before him herein and that he had no objection to the vacating of said order of Refer- 1821
ence. On the 12th day of May, 1921, the said instrument withdrawing the objections to the account and the said certificate executed by the Referee were duly filed in this Court; and thereupon an order was duly made by his Honor, Surrogate Cohalan, and entered in this Court, allowing the withdrawal and cancellation of the said objections to the account and vacating the said order of Reference and directing that the final decree in this proceeding could now be submitted on giving notice of the settlement thereof to the parties who had appeared herein by attorney. No objection to the account (other than those above mentioned and cancelled) has been made by any party to this proceeding.

Now Therefore, upon motion of Smith & Agate, attorneys for the said Executor, due notice of the settlement of this decree having been served on the said attorneys

1822 *Exhibit P Annexed to Answering Affidavit of George E. Warren*

who have appeared herein, the said Surrogate, after having examined the said account, now finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof, made by the said Surrogate, as judicially settled and adjusted by him, to be recorded with and taken to be a part of the decree in this proceeding, to wit:

Summary Statement of the account of the Columbia Trust Company, as Executor of the Last Will and Testa-
1823 ment of Hermann Sielcken, deceased, extending from the date of the Executor's appointment to the 28th day of February, 1919, made by the Surrogate as judicially settled and allowed:

CASH

The executor is charged with the cash set forth in Schedule 1	439,138.22	
With cash received as shown in Schedule 2	6,630,920.45	$7,070,058.67

1824

The executor is credited with cash paid out as shown in the following Schedules:		
Schedule 3	1,020,072.97	
Schedule 4	761,986.15	
Schedule 5	2,295,922.63	
Schedule 6	100,000.00	$4,177,981.75
Balance of cash on hand		$2,892,076.92

ASSETS

The executor is charged with the amount of Schedule 1	6,463,481.21	
With income as shown in Schedule 2	252,940.26	$6,716,421.47

Exhibit P Annexed to Answering Affidavit of George E. Warren 1825

The executor is credited with the following schedules:

Schedule 3	1,020,072.97	
Schedule 4	761,986.15	
Schedule 6	100,000.00	
Schedule 7	599,091.36	
Schedule 9	58,451.27	
also amount paid for accrued interest on U. S. Certificates of indebtedness as shown in Schedule 5	3,205.50	$2,542,807.25

1826

Balance of assets now on hand as shown in Schedule 12, including cash on hand $4,173,614.22

Subject to alleged claims against the estate as shown in Schedule 10 and to the Executor's commissions as shown in Schedule 13 of the said account, with which said balance the Executor is hereby charged as of the said 28th day of February, 1919.

And, it appearing that the Executor has fully accounted for all the moneys and personal property of the estate of said decedent which came to its hands as such Executor, down to the said 28th day of February, 1919, and its account having been adjusted by the said Surrogate and a summary statement of the same having been made as above and herewith recorded; 1827

It Is Ordered, Adjudged And Decreed, that the said account be, and the same hereby is, judicially settled and allowed as filed and adjusted;

And It Is Further Ordered, Adjudged and Decreed, that out of the moneys remaining in its hands, the Executor shall pay the two legacies of Fifty thousand (50,000) Dollars each, to John S. Sorenson and Thorleif S. B. Nielsen respectively, as specified in the second article of the Will of said decedent:

1828 *Exhibit P Annexed to Answering Affidavit of George E. Warren*

And It Is Further Ordered, Adjudged and Decreed, that out of the moneys remaining in its hands, the Executor retain the sum of Thirty-four thousand fifty-five hundred and forty-eight/100 ($34,055.48) Dollars, for the commissions to which it is entitled on this accounting, as specified in Schedule 12 (twelve) of said account:

And It Is Further Ordered, Adjudged and Decreed, that all the assets and personal property that belonged to said decedent's estate on the said 28th day of February, 1919, after deducting the payments hereinbefore directed, are chargeable as hereinbefore adjudged to the said Executor for further administration:

1829

And It Is Further Ordered, Adjudged and Decreed, that the said Executor, upon complying with the directions herein contained, shall be fully freed and discharged from all liability, claim and demand as to the matters included in the said account.

(SD) JOHN P. COHALAN,
Surrogate.

1830

Exhibit Q Annexed to Answering Affidavit of George E. Warren. 1831

At a Surrogates' Court, held in and for the County of New York, at the Hall of Records, in the Borough of Manhattan, New York City, on the 11th day of July, 1922.

Present: Hon. James A. Foley, Surrogate.

IN THE MATTER of The Judicial Settlement of the Account of COLUMBIA TRUST COMPANY, as Executor of the Will of Hermann Sielcken, deceased.	Final Decree.

1832

The Columbia Trust Company (formerly the Columbia-Knickerbocker Trust Company) as Executor of the Will of Hermann Sielcken, deceased, having heretofore filed a petition on the 28th day of March, 1922, in the Surrogates' Court of the County of New York, for the judicial settlement of its account as such Executor from February 28th, 1919, the date of its last accounting to 1833
and including December 31st, 1921; and a citation having been thereupon issued, pursuant to statute, directed to all persons interested in the estate of said decedent, citing them and each of them to show cause before said Surrogate upon the day and hour therein fixed at the Surrogates' Court of said County, why the account of the Columbia Trust Company, as Executor as aforesaid, should not be judicially settled, and an order having been duly made herein on March 28th, 1922, directing service of the citation by publication, pursuant to statute, upon Gustav Diederichson, Georg Georgius, Carl Isenberg, Richard Isenberg, City of Baden-Baden, Woolson Spice Company and Thomas W. Miller, Alien Property Custodian, who are respectively non-residents of the State of New York, and upon whom personal service of the citation herein cannot with due diligence be

1834 *Exhibit Q Annexed to Answering Affidavit of George E. Warren*

made; and the said citation having been returned with proof of due service by publication and mailing pursuant to said order upon the several persons therein named, and with due proof of personal service upon all the other persons interested in the estate of said decedent and named in said petition, except Clara Schwarz, formerly Clara Sielcken; and said Clara Schwarz having duly appeared herein by Davies, Auerbach & Cornell, Esqs., her attorneys, with a written author-
1835 ization for such appearance duly signed and acknowledged by the said Clara Schwarz pursuant to statute, and all the parties so cited being now in default and having failed to appear herein in person or by attorney, except the said Clara Schwarz, and the following other parties who have appeared herein by attorney, namely:

The Woolson Spice Company, which has appeared herein by Wise & Seligsberg, Esqs., its attorneys; and

Marguerite A. Blackwell, who has appeared herein by Niles & Johnson, Esqs., her attorneys;

And the executor's account under oath, with vouchers in support thereof, having been filed in this Court
1836 with its said petition for the settlement thereof;

And the said Woolson Spice Company having filed an instrument in the form of an objection to the account, not objecting to any specific item in the account, but praying that the decree to be entered herein shall direct that the sum of $1,540,000 be retained and set aside by the Executor to meet any judgment, interest and costs which may be ultimately recovered by the said Woolson Spice Company in its action pending against the Executor; and the said Marguerite A. Blackwell having obtained an order to show cause, dated May 4th, 1922, made by Hon. James A. Foley, Surrogate, requiring the Executor to show cause why said Executor and said Clara Schwarz should not be restrained, enjoined and stayed from taking any proceedings of any kind or character in this accounting until after the trial, hearing and determination by the Supreme Court of the

1837

action instituted by said Marguerite A. Blackwell against the said Executor, which action is now pending; and the motion on said order to show cause coming on to be heard before this Court on May 9th, 1922, and the hearing upon said petition and account of the Executor herein coming on to be heard at the same time; and the said motion for a stay having been denied, and an order having been duly made thereon on May 29th, 1922, and entered May 31st, 1922, denying said motion for a stay and further providing that the decree to be entered in this accounting proceeding should provide that the Executor retain all of the assets of the estate now in its hands, less administration expenses properly deductible, with leave to both parties to apply at the foot thereof on notice for any proper modification, and also to contain a provision that the settlement of the accounts of the Executor shall not in any way confirm or ratify payments made to the widow, nor prejudice the Woolson Spice Company and Marguerite A. Blackwell in any future attempts to surcharge the Executor for erroneous payments if any have been made, and further ordering that no further distribution of the assets of this estate is to be made until the further order of this Court; and the proceeding upon said petition and account having duly marked for a decree; and no objection to the account having been filed except the above-mentioned so-called objection of the Woolson Spice Company;

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1839

And upon reading and filing the affidavit of George E. Warren, verified March 15th, 1922; the affidavit of Leonard B. Smith, verified March 24th, 1922; the affidavit of Edward Cornell, verified March 22nd, 1922; the affidavit of Frank H. Stewart, verified March 20th, 1922, the affidavit of John D. Fearhake, verified March 16th, 1922; the affidavit of Bernard Rosenthal, verified March 17th, 1922; the affidavit of David Drechsler, verified March 15th, 1922; the affidavit of Hans H. A. Meyn, verified March 24th, 1922; the agreement of renunciation dated August 31st, 1921, duly executed and ac-

knowledged by the Josephinen Heim, one of the legatees named in the will of said decedent; and the agreement dated March 29th, 1920, between Gustav Diederichson, Georg Georgius, Carl Isenberg and Richard Isenberg, the German executors of the will of said decedent, parties of the first part, said Columbia Trust Company, as American Executor of said will, party of the second part, and Clara Sielcken, the widow and residuary legatee under said will, party of the third part, duly executed and acknowledged by said parties respectively;

Now Therefore upon motion of Smith & Agate, attorneys for the said Executor, the said Surrogate, after having examined the said account, now finds the state and condition of the said account to be as stated and set forth in the following summary statement thereof, made by the said Surrogate, as judicially settled and adjusted by him, to be recorded with and taken to be a part of the decree in this proceeding, to wit:

Summary Statement of the account of the Columbia Trust Company, as Executor of the will of Hermann Sielcken, deceased, extending from the 28th day of February, 1919, the date of the last accounting, to and including the 31st day of December, 1921, made by the Surrogate as judicially settled and allowed:

CASH

The executor is charged with the cash set forth in Schedule 1	$2,892,076.92	
With cash received as shown in Schedule 2		
Principal	1,532,787.88	
Income	309,195.12	
		$4,734,059.92

Exhibit Q Annexed to Answering Affidavit of George E. Warren 1843

The executor is credited with cash paid out as shown in the following Schedules:		
Schedule 3	$ 65,441.45	
Schedule 4	421,140.41	
Schedule 5	2,267,816.06	
Schedule 5 (a)	2,672.36	
Schedule 6	1,649,425.00	
		1844
		4,406,495.28
Balance cash on Hand		$ 327,564.64

ASSETS

The executor is charged with the amount of Schedule 1,	4,173,614.22	
With income as shown in Schedule 2,	309,195.12	
With interest charged to customers but not collected as shown in Schedule 2 (a)	6,945.65	$4,489,754.99 1845
The executor is credited with the following Schedules:		
Schedule 3	65,441.45	
Schedule 4	421,140.41	
Schedule 6	1,649,425.00	
Schedule 7	58,342.30	
Schedule 9	2,394.46	
Schedule 9 (a)	2,572.11	$2,199,315.73
Balance of Assets now on hand as shown in Schedule 12		$2,290,439.26

1846 *Exhibit Q Annexed to Answering Affidavit of George E. Warren*

Subject to alleged claims against the estate as shown in Schedule 10, and to Executor's commissions as shown in Schedule 13, and taxes and other expenses of administration, with which said balance the Executor is hereby charged as of the said 31st day of December, 1921.

And, it appearing that the Executor has fully accounted for all the moneys and personal property of the estate of said decedent which came to its hand as
1847 such Executor, down to the said 31st day of December, 1921, and its account having been adjusted by the said Surrogate and a summary statement of the same having been made, as above and hereby recorded;

It Is Ordered, Adjudged and Decreed, that the said account be, and the same hereby is, judicially settled and allowed as filed and adjusted;

And It Is Further Ordered, Adjudged and Decreed, that out of the moneys remaining in its hands, the Executor retain the sum of Sixteen thousand three hundred and forty-one ($16,341) Dollars, for the commissions to which it is entitled on this accounting, as specified in Schedule 13 (thirteen) of said account;

1848 And It Is Further Ordered, Adjudged and Decreed, that all the assets and personal property that belonged to said decedent's estate on the said 31st day of December, 1921, after deducting the amount of the commissions above set forth, are chargeable as hereinbefore adjudged to the said executor for further administration;

And It Is Further Ordered, Adjudged and Decreed, that out of the assets so remaining in its hands, said Executor retain and set aside the sum of One million five hundred and forty thousand ($1,540,000) Dollars, to meet any judgment which may be ultimately recovered by the said Woolson Spice Company, in its action in the Supreme Court, now pending against the said Executor;

And It Is Further Ordered, Adjudged and Decreed, that the said Executor retain and set aside all the assets in its hands remaining after complying with the fore-

Exhibit Q Annexed to Answering Affidavit of George E. Warren 1849

going provisions of this decree, less administration expenses properly deductible, to meet any judgment which may be ultimately recovered by said Marguerite A. Blackwell, in her action in the Supreme Court, now pending against the said Executor;

And It Is Further Ordered, Adjudged and Decreed, that as against the said Woolson Spice Company and the said Marguerite A. Blackwell, this decree and the settlement of the Executor's account herein provided for, shall not in any way confirm or ratify payments made by 1850
said Executor to Clara Schwarz, formerly Clara Sielcken, the widow and residuary legatee of said decedent, nor prejudice the said Woolson Spice Company and Marguerite A. Blackwell, or either of them, in any future attempts to surcharge the Executor for erroneous payments to the said widow, if any have been made;

And It Is Further Ordered, Adjudged and Decreed, that no further distribution of the assets of this estate is to be made until the further order of the Court;

And It Is Further Ordered, Adjudged and Decreed, that leave is hereby given to the said Columbia Trust Company, as Executor as aforesaid, to said Woolson Spice Company and to said Marguerite A. Blackwell, 1851
or any one or more of them to apply at any time hereafter at the foot of this decree on notice for any proper modification of any provision or provisions of the four paragraphs of this decree last above contained herein;

And It Is Further Ordered, Adjudged and Decreed, that the said Executor, upon complying with the directions herein contained, shall be fully freed and discharged from all liability, claim and demand as to the matters included in the said account.

JAMES A. FOLEY,
Surrogate.

Exhibit R Annexed to Answering Affidavit of George E. Warren.

This exhibit is a copy of Exhibit E of Petition for Leave to Intervene, printed above on page 353.

1852 **Exhibit S Annexed to Answering Affidavit of George E. Warren.**

December 17, 1917.

Joseph A. Bower, Esq., Manager
Business Department,
Enemy Alien Custodian
120 Broadway, New York City.

My dear Mr. Bower:

We have received a copy of the "Frankfurter Zei-
1853 tung," a daily newspaper published in Frankfurt, Germany, dated October 11, 1917, containing a formal notice of the death of Hermann Sielcken, who died on October 8th, 1917.

The Columbia Trust Company is in possession of a will signed by Mr. Sielcken in which it is named as executor, and which we are now advised by counsel should be filed for probate. In view of the fact that this apparently alters the situation as regards the assets of the firm of Crossman & Sielcken, it will become necessary for the executor to account for the estate as of the date of Mr. Sielcken's death, October 8th, 1917, and to open
1854 up a set of books as of that date.

Do you not think it would be possible for the Alien Enemy Custodian to permit the turning over of the assets of Crossman & Sielcken to us as executor when the will is admitted to probate. We can then proceed to account for the value of the estate as of October 8th, the date of Mr. Sielcken's death, bring proceedings for the determination of the New York State Inheritance Tax, the Federal Inheritance Tax, liquidating any claims due to American citizens, and be prepared to hold for account of or turn over to the Alien Enemy Custodian, such proportion of the estate as belongs to alien enemies.

Awaiting your further advices or instructions, I am

Yours respectfully,

GW
Vice-President.

gew.dw.

Exhibit T Annexed to Answering Affidavit of George E. Warren. 1855

A. P. C. 197

In replying address only
The Alien Property Custodian
and Refer to No.

2281

ALIEN PROPERTY CUSTODIAN

SIXTEENTH AND P STREETS NW.

Washington, D. C.

April 1, 1921. 1856

(G.E.W.)

Re: Report No. 17412
Estate of Herman Sielcken

Columbia Trust Co.,
60 Broadway,
New York, N. Y.

Gentlemen:

On March 18th, 1918 you executed and forwarded to this office a report as executor under the Will of Herman Sielcken, deceased. This report was filed in this office March 19th, 1918, and given the report number as above. This report showed the following enemy interest in this estate: 1857

Name	Address
(Gustav Diederichsen	Germany
(Heinrich Diederichsen	do
(Carl Isenberg	do
(Richard Isenberg	do

German executors under the Will of Herman Sielcken

Henrich Seidel	Baden-Baden, Gy.
Lina Kraft	" "
City of Baden	" "
Josephine Heim Hospital	" "
Clara Sielcken	" "

1858 *Exhibit T Annexed to Answering Affidavit of George E. Warren*

On September 27th, 1918, the Custodian issued a demand, service of which you accepted October 25th, 1918 which demand called for the delivery to the Custodian of the interest of the above named enemies in the estate when the same should be ascertained.

This demand carried but one trust number, that is trust No. 1 which on the records of the office of the Alien Property Custodian is the trust number assigned Herman Sielcken. For the purpose of correcting our
1859 records it became necessary that separate trust numbers should be assigned the individual interests. The trust numbers assigned are as follows:

German executors — Trust No. 46815

In the correspondence of the Alien Property Custodian the word "enemy" is used as meaning "enemy" or "ally of enemy," as defined by the Trading with the enemy Act.

Columbia Trust Co. 4/1/21

Heinrich Seidel	Trust No.	46816
Lina Kraft	" "	46817
1860 City of Baden	" "	46818
Josephine Heim Hospital	" "	46819
Clara Sielcken	" "	12604

Will you therefore avoid the necessity of issuing supplemental demands by correcting on your copy of the demand the trust numbers so that the individual interest will carry the trust number above listed rather than a general trust No. 1. The Custodian may possibly issue a supplemental demand covering the interest of the chief gardener Brinkmann which interest was not heretofore demanded.

The claim filed by you for the release to you of property now held by the Alien Property Custodian will close out upon our books Trust No. 1, and the claim filed by Clara Sielcken for the release of property held in her

Exhibit T Annexed to Answering Affidavit of George E. Warren

name will close out our Trust No. 12604. There will then remain upon our books the outstanding demands in the remaining trusts above listed, which will be closed when distribution is made.

We should be glad to have you advise when you have made the changes upon the copy of the demand left with you and upon your records.

Very truly yours,

H. B. CATON
Director, Bureau of Trusts.

HBC:CK